



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

March 5, 2021

BY ECF

Honorable P. Kevin Castel
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Virgil Griffith, 20 Cr. 15 (PKC)*

Dear Judge Castel:

The Government writes in response to the defendant's request to adjust his conditions of pretrial release to allow (i) substitution of a curfew instead of home detention enforced by electronic monitoring; and (ii) general travel to Los Angeles with 48-hours' notice to the Pretrial Services Department. The Government respectfully submits that the defendant has failed to present new information or changed circumstances to justify reopening this Court's bail determinations, and that the proposed modifications are inappropriate in light of the serious risk of flight and danger to the community presented by Griffith.¹

Background

As brief background, Griffith was arrested on November 28, 2019 at the Los Angeles International Airport before boarding a flight to Baltimore, Maryland. On December 2, 2019, Griffith was presented in the Central District of California ("CDCA"). While a magistrate judge in CDCA initially ordered the defendant bailed on certain conditions, Judge Cote, sitting in Part I, stayed the CDCA release order pending the defendant's arrival in this District. On December 26, 2019, the defendant was presented before Magistrate Judge Moses, who ordered the defendant detained, citing the defendant's significant cryptocurrency assets, lack of transparency regarding the defendant's financial holdings, delay in disclosing an unknown residence in Puerto Rico, lack of ties to the United States, the nature of the offense conduct, and the defendant's own statements expressing interest in renouncing his U.S. citizenship, purchasing citizenship

¹ With apologies, the Government seeks leave to file this letter *nunc pro tunc*. The parties initially proposed, and the Court adopted, a schedule requiring the Government's opposition no later than March 2, 2021. The undersigned inadvertently failed to adhere to that schedule and regret the error. In light of that error and after discussions with defense counsel, the parties propose that the defendant be granted additional time to reply to the Government's opposition and propose a reply date of March 12, 2021.

elsewhere, and setting up a money laundering operation in North Korea. Presentment Tr. 46-48 (attached hereto as Exhibit A). Griffith appealed that order to Judge Broderick, who was sitting in Part I.

On December 30, 2019, Judge Broderick ordered the defendant released on bail under strict conditions. Those conditions included: (1) a \$1,000,000 bond co-signed by the defendant's sister, father, and mother; (2) securing the bond with two homes owned by the sister and parents; and (3) home detention in his parents' home in Alabama with electronic and GPS monitoring. *See* Dkt. 8. Judge Broderick also allowed the defendant to travel to the New York area for the purpose of attending court or meeting with his attorneys. *See id.* ¶ 8. Judge Broderick's order further provided that "[t]o the extent the Government deems it necessary, in connection with all visits to and from the New York Districts, Defendant shall be accompanied to the airport by an agent of the Federal Bureau of Investigation or other investigative agency designated by the Government, who shall ensure that he boards his flight." *Id.*

On July 20, 2020, the defendant moved to modify his bail conditions, including by removing the same home detention provision he challenges again. *See* Dkt. 48. On July 24, 2020, the Court denied the defendant's request for a bail modification, ruling:

I will point out that the proof of risk of flight, which I find by a preponderance of the evidence is supported by the defendant's obvious access to sources outside the United States. He is of great value to those who wish to evade U.S. or U.N. sanctions with his knowledge and they would be incentivized to help him flee. So I find that the conditions that are presently existent satisfy that.

Further, this is my finding by clear and convincing evidence that the conditions are necessary because Mr. Griffith presents a danger to the community and persons in that community other than himself. . . . [I]t is . . . the willingness to travel knowing of the likely exposure of the risk he was willing to take is such that this man in my view has the ability to respond to detailed questions with technical information and knowledge that poses a grave danger. That's my concern here and the modest restrictions that Judge Broderick imposed appear to me to address that danger as well as the risk of flight.

Dkt. 56 at 24-25 (attached hereto as Exhibit B).

On February 11, 2021, the defendant submitted a letter requesting, with the Government's consent, modifications of his pretrial release, including: to allow the use of an e-reader, to remove the drug testing requirement, and allow the use of email, subject to monitoring by Pretrial Services. *See* Dkt. 92. The Government would not consent, however, to the defendant's release from home detention or general travel to Los Angeles on 48 hours' notice and, on February 23, 2021, the defendant filed the instant motion for a bail modification. *See* Dkt. 95.

Legal Standards

A determination of bail conditions “may be reopened . . . at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.” 18 U.S.C. § 3142(f)(2)(B); *see also United States v. Rodriguez*, 2015 WL 6503861, at *1 (S.D.N.Y. Oct. 26, 2015) (“[T]he hearing can be reopened if the court finds that information exists that was not known to the defendant at the time of the hearing and that has a material bearing on the issue that was decided.”). However, “[a] bail hearing should not be reopened on the basis of information that was available to the defendant at the time of the hearing.” *United States v. Lewis*, No. 16 Cr. 212, 2016 WL 6902198, at *2 (S.D.N.Y. Nov. 16, 2016) (citing *United States v. Hare*, 873 F.2d 796, 799 (5th Cir. 1989)). Courts in this District have found that “new and material information for Section 3142(f)(2)(B) purposes consists of something other than a defendant’s own evaluation of his character or the strength of the case against him: truly changed circumstances, something unexpected, or a significant event.” *United States v. Esposito*, 354 F.Supp.3d 354, 358-59 (S.D.N.Y. 2019) (*quoting United States v. Quinones*, No. 13 Cr. 83S, 2016 WL 1694998, at *1 (W.D.N.Y. Apr. 28, 2016)).

The Government bears the burden of showing by a preponderance of the evidence that the defendant poses a risk of flight or, by clear and convincing evidence, that the defendant poses a danger to the community, and that no condition or combination of conditions can address those risks. *See* 18 U.S.C. § 3142(f); *United States v. Sabhnani*, 493 F.3d 63, 75 (2d Cir. 2007); *United States v. Mercedes*, 254 F.3d 433, 436 (2d Cir. 2001).

In assessing a defendant’s risk of flight and the danger to the community presented by release, a court must consider four factors:

- (1) the nature and circumstances of the offense charged . . . ;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person, including—
 - (A) the person’s character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
 - (B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

18 U.S.C. § 3142(g).

Discussion

The defendant's proposed bail modifications are inappropriate because the defendant has not identified any new and material information justifying his request to modify his bail conditions, and because the proposed modifications do not adequately account for the fact that Griffith remains a risk of flight and danger to the community, as the Court found as recently as July 2020.

Regarding Griffith's request to substitute a curfew for home detention, the Court already considered and rejected such a proposal. Then as now, Griffith is a flight risk. Griffith has significant ties to foreign jurisdictions. For years prior to his arrest, Griffith worked for a European organization and lived in Singapore. Shortly before his arrest, he was actively exploring renouncing his United States citizenship, including by paying thousands of dollars to purchase citizenship in Caribbean nations. Ex. A, Presentment Tr. 11-12. Griffith appears to have believed that this wealth could help him avoid serious criminal sanctions, including with respect to the conduct at issue in this very case. Shortly after leaving the DPRK, on or about April 26, 2019, Griffith wrote in a series of electronic messages to his mother:

Griffith: I think I'm going to be the connector in Blockchain-mediated economic relations between dprk and South Korea

Griffith: Should be fun

Griffith: Hopefully won't have much jail time for it

Griffith: I'll try to be wealthy enough to pay my bail.

On top of his foreign ties, wealth, and disregard for the law, the defendant's specialized skills and expertise indicate he has access to means to facilitate flight. The defendant is highly technologically adept, with substantial knowledge of and experience with the darkweb, which can be used to obtain, among other things, false identifications, requiring restrictions even on his use of the Internet to ensure he does not flee prosecution. *See* Dkt. 50 at 7-8.

Moreover, the evidence against Griffith has only grown stronger since the bail hearing. The Government now has audio recordings of parts of Griffith's presentation and his answers to questions during the 2019 Cryptocurrency Conference in Pyongyang, which included highly technical information about blockchain and cryptocurrency technologies. As detailed in its opposition to the defendant's pretrial motions, the Government has also obtained additional communications between Griffith and several other people, which establish that Griffith intended to help North Korea evade sanctions through the use of blockchain and cryptocurrency technologies long before and even after the conference he attended. Moreover, the Court recently denied the defendant's motions, *see* Dkt. 89, 99, making even more likely the defendant's eventual

trial on the pending charge. On that charge, Griffith faces significant sentencing exposure if he is convicted—the Government’s preliminary calculation of the Sentencing Guidelines Range is 57 to 71 months’ imprisonment. The fact that the proof against the defendant is very strong and he faces significant time in prison if convicted provides him with a strong incentive to flee.

The defendant argues that concern about the defendant’s access to financial resources “has been addressed” because he no longer has access to the cryptocurrency wallets he kept in his Singapore apartment. Dkt. 95 at 3. The amelioration of that concern, however, depends on Griffith’s having told Pretrial Services the complete truth about his access to untraceable cryptocurrency. Indeed, Judge Moses found it “troubling” that Griffith chose not to provide full disclosures of his financial holdings, particularly given his expertise in cryptocurrency, and noted that his unknown wealth could make the value of a bond secured by his parents’ home “pale in comparison.” Ex. A, Presentment Tr. 26, 46. In the information that Griffith did disclose, he admitted that he held substantial cryptocurrency assets on unspecified exchanges accessible via the Internet, and not solely in these “cold storage” wallets in the Singapore apartment. *Id.* at 15-16. The Government and Pretrial Services have never received a full report of the defendant’s financial holdings, making it impossible to assess whether the value of the bond is sufficiently meaningful to this defendant. Moreover, the prices of cryptocurrencies have skyrocketed over the past year, and so even small amounts of cryptocurrency that Griffith retained, or acquired since his arrest, would provide substantial assets that could be used to flee and compensate the family members who signed his bond for any losses if the bond is forfeited. For example, the value of a *single* ether, the unit of currency of the Ethereum Foundation, is presently worth approximately \$1,494.87 U.S. dollars.² The rate of return on investments in ether is approximately 99.88% over just the past year to date. *Id.* As a result, Griffith’s finances, known to be primarily held in cryptocurrency, could be worth significantly more today than they were even one year ago. A single year of Griffith’s salary at Ethereum – reported by him to be \$150,000 annually – could be worth tens, if not hundreds, of millions of dollars if it was held in ether.³

As the Court determined, the “grave danger” that the defendant presents to the community justifies strict conditions of pretrial release. Dkt. 56 at 24-25. That risk of danger has not changed since the time of the defendant’s arrest. The charges reflect that the defendant used his expertise to conspire to provide financial services to a hostile foreign power, the DPRK, and DPRK persons. As the Court knows, the defendant’s contact with law enforcement after he returned from the DPRK did not deter him from continuing to pursue efforts to illegally provide services to North Korea. As evidenced by his private text message conversations, the defendant continued to pursue projects in the DPRK, including the planned 2020 DPRK Cryptocurrency Conference, even as he was meeting with FBI agents.⁴ Griffith’s electronic communications show that he attempted to

² See <https://www.coindesk.com/price/ethereum> (last visited March 5, 2021).

³ As recently as January 2017, when Griffith was employed by Ethereum, the price of a single unit of ether was as little as \$7. <https://www.investopedia.com/news/how-did-ethereums-price-perform-2017/> (last visited March 5, 2021).

⁴ The 2020 DPRK Cryptocurrency Conference was ultimately cancelled after United Nations experts warned the public not to attend and flagged the event as a likely violation of international sanctions. See <https://www.reuters.com/article/us-northkorea-sanctions-un-exclusive/exclusive-u->

recruit approximately eight other U.S. Citizens to attend with him. In August 2019, the defendant told an associate in a series of electronic messages that he intended to go back to North Korea to engage in a transaction which he explicitly acknowledged would violate sanctions. When the associate expressed concern that “[i]t makes me nervous for you to defy the US government and go again,” Griffith stated that he would “figure something out.” The next day, Griffith stated in a voice message to the same person: “Probably worst comes to worst, I’ll find someone to send as like an emissary to go and I’ll like tell that person what to do via the phone. Yeah, I can always do that, because it seems like the Americans let you get away with it once.” Following those conversations, only approximately two months before his arrest, Griffith sent text messages where he proposed founding “a money laundering company in North Korea,” should he be fired from his position at the Ethereum Foundation. As this Court recognized, these activities make the defendant highly valuable to those who wish to evade U.S. and U.N. sanctions, posing a clear danger to national security.

Also fatal to the defendant’s motion is his failure to demonstrate the need for an adjustment from home detention, other than to say that it is an inconvenience to alert Pretrial Services in advance of trips to the grocery store. *See* Dkt. 95 at 3. This is an insufficient basis for reopening the prior bail determinations. Judge Broderick—and later this Court—found that home detention was the least restrictive condition that would adequately ensure the safety of the community and the defendant’s appearance in Court. If Griffith wishes to leave his home, he could work outside his parents’ home, as permitted by the home detention ordered by the Court. Thus far, however, he has chosen not to do so. That Griffith would prefer to leave his home at times of his choosing is unsurprising, but not a basis for a bail modification.

The Government also opposes the defendant’s request, as currently framed in his application, for a bail modification permitting trips to Los Angeles. As the Government advised defense counsel in our discussions, the Government is sensitive to the defendant’s need to consult with counsel and would consent to particular trips, if proposed. General access to fly from Alabama to Los Angeles, however, would undermine the Court’s bail conditions and is unnecessary and impractical during the ongoing COVID-19 pandemic. Because the defendant presents such a significant flight risk, any air travel, particularly to international airports, is highly problematic. For this reason, the defendant’s current conditions provide that for any air travel to New York, the Government may arrange to have Griffith “accompanied to the airport by an agent of the Federal Bureau of Investigation or other investigative agency designated by the Government, who shall ensure that he boards his flight.” *See* Dkt. 8. The notice conditions in place for travel to New York also permit the Government to conduct surveillance of Griffith’s travel if deemed necessary. At a minimum, the Government submits that the same conditions and restrictions should apply to any travel to Los Angeles for the defendant, and that as a result, 48 hours’ notice to Pretrial Services for travel to Los Angeles is not viable to ensure the availability of adequate supervision.

n-sanctions-experts-warn-stay-away-from-north-korea-cryptocurrency-conference-idUSKBN1ZE0I5 (last visited March 5, 2021).

The defendant's request is further complicated by the COVID-19 pandemic.⁵ Under current quarantine requirements, any trip by Griffith to California would require a stay of at least 11 days away from his home detention in order to accommodate even a single day of meetings with counsel. The Government is fully prepared to work with the defense to make arrangements to permit Griffith to do so for planned meetings with his counsel with sufficient notice to the Government, but such extensive surveillance coverage for more than a week at a time, particularly in another jurisdiction, simply cannot be arranged on the ad-hoc broad basis that the defendant proposes.

The defendant argues that they are merely seeking parity between the defendant's ability to travel to New York and travel to Los Angeles. But the defendant's access to Los Angeles is accompanied by additional risks not present for trips to New York. As described above, the defendant was arrested in Los Angeles, where he had been staying with friends in the days before his apprehension. Such a social network could be helpful in facilitating the defendant's flight from prosecution. The Government remains willing to work with the defense to arrange appropriate supervision of the defendant for specified trips to Los Angeles if necessary for him to meet with his counsel, but such general access presents an increased risk of flight. The Government notes that the defendant already remains able to travel to New York to meet with counsel here, or to have his counsel travel (whether from New York or Los Angeles) to Alabama to meet him. However, the defendant's choice to engage counsel in Los Angeles, in addition to counsel in New York, does not justify general travel to Los Angeles for a defendant on home detention, for weeks at a time, with as little as 48 hours' notice. Such a change in conditions would not be adequate to protect against the defendant's risk of flight.

⁵ The state of California presently requires a self-quarantine period of 10 days for any incoming travelers from other states, prior to meeting with any persons outside their household. *See* "Do I need to self-quarantine when I arrive in California?," available at <https://covid19.ca.gov/travel/#:~:text=Traveling%20into%20California%20from%20other,health%20needs%20or%20other%20emergency> (last visited March 5, 2021).

Conclusion

For the foregoing reasons, the defendant's requests to modify his bail conditions should be denied.

Respectfully submitted,

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Southern District of New York

By: _____/s/_____
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Attorneys for Virgil Griffith (By ECF)

Exhibit A

1 (GOVERNMENT MICROPHONE NOT WORKING.)

2 THE CLERK: USA v. Virgil Griffith. Counsel, state
3 your name for the record.

4 MS. RAVENER: Good afternoon, Your Honor. Kimberly
5 Ravener for the Government.

6 THE COURT: Good afternoon. You may be seated.
7 Ladies and gentlemen in the back, you may be seated.

8 MR. BUCKLEY: Good afternoon, Your Honor. Sean
9 Buckley for Dr. Virgil Griffith.

10 THE COURT: Mr. Buckley, you may be seated.

11 MR. BUCKLEY: Thank you.

12 THE COURT: Mr. Griffith, I am Magistrate Judge
13 Moses. You were born in the U.S. and speak and understand
14 English; correct?

15 THE DEFENDANT: Yes.

16 THE COURT: May I have the date and time of the
17 arrest, please?

18 MS. RAVENER: Yes, Your Honor. Mr. Griffith was
19 originally arrested on November 28th of this year. However,
20 he arrived in this district on December 23rd, that is Monday
21 after five p.m. approximately.

22 THE COURT: Was he released by the magistrate judge
23 in California or is he in custody -- was he in custody?

24 MS. RAVENER: Your Honor, Mr. Griffith was
25 originally presented pursuant to Rule 5(c)(3) in Los Angeles.

1 The magistrate judge in Los Angeles set conditions to permit
2 Mr. Griffith's potential release. However, upon an appeal by
3 the U.S. Attorney's Office to this district, Judge Cote in her
4 Part One capacity stayed that order --

5 THE COURT: Pending presentment and bail here?

6 MS. RAVENER: Yes. I'll reach out to Judge Cote's
7 chambers to advise her of his arrival. However, they are not
8 looking [inaudible].

9 THE COURT: But I'm open.

10 MS. RAVENER: Thank you, Your Honor.

11 THE COURT: All right. So, Mr. Griffith, the
12 purpose of today's proceeding is to advise you of certain
13 rights that you have, to inform you of the charges against
14 you, to consider whether counsel should be appointed for you
15 and to decide under what conditions if any you shall be
16 released pending trial.

17 Much of what I am about to tell you you have heard
18 before in California but I encourage you to listen carefully
19 because it is important information.

20 You have the right to remain silent. You are not
21 required to make any statements. Even if you have already
22 made any statements to the authorities you do not need to make
23 any further statements. Any statements that you do make can
24 be used against you.

25 You have the right to be released either

1 conditionally or unconditionally pending trial unless the
2 Court finds that there are no conditions that would reasonably
3 assure two things. Number one, your presence in court when
4 required, and number two, the safety of the community.

5 If you are foreign national you have the right to
6 request that a consular officer from your country of origin be
7 notified of your arrest. I'm required to give all defendants
8 this information whether or not I believe that they are
9 foreign nationals. In some cases a treaty or other agreement
10 may require the U.S. to give that notice whether it is
11 requested by the defendant or not.

12 You have the right to be represented by an attorney
13 during all court proceedings including this one and during all
14 questioning by the authorities. If you cannot afford an
15 attorney I will appoint one today to represent you.

16 Mr. Buckley, you are retained; correct?

17 MR. BUCKLEY: That is correct, Your Honor.

18 THE COURT: So there is no application for
19 appointment of counsel at this time.

20 MR. BUCKLEY: That's correct.

21 THE COURT: All right. I see, sir, that you have
22 been charged via complaint. I have a copy of the complaint
23 here. The complaint is the document containing the formal
24 legal charges against you. I see that you are charged in
25 Count One with conspiracy to violate the International

1 Emergency Economic Powers Act in violation of Title 50 of the
2 United States Code Section 1705 and Executive Orders 13,466
3 and 13,722 and also Title 18 of the United States Code Section
4 3238.

5 Counsel, have you received a copy of the complaint
6 and have you reviewed it with your client?

7 MR. BUCKLEY: I have received a copy of the
8 complaint, Your Honor, and my co-counsel, Brian Klein and
9 Kerry Axel have reviewed it with the client.

10 THE COURT: Do you waive its public reading?

11 MR. BUCKLEY: We do, Your Honor.

12 THE COURT: Because you have been charged by
13 complaint, sir, you have a right to a preliminary hearing. At
14 the preliminary hearing the Government will have the burden of
15 establishing that there is probable cause to believe that the
16 crime for which you are being charged has been committed and
17 that you are the person who committed it.

18 If you are in custody you have a right to that
19 hearing within 14 days. If you are not in custody you have a
20 right to that hearing within 21 days. However, no preliminary
21 hearing will be held if you are indicted by a grand jury or if
22 an information is filed against you by the Government on or
23 before the date on which the hearing was scheduled.

24 I will set a preliminary hearing date at the
25 conclusion of our proceedings this afternoon but before we get

1 to that let us discuss the question of conditions of release,
2 if any. My understanding is that the Government seeks
3 detention. Is that correct?

4 MS. RAVENER: Correct, Your Honor.

5 THE COURT: Briefly please give me the grounds on
6 which you make the request. Are you contending that the
7 defendant presents a serious risk of flight under Section
8 3142(f)(2) --

9 MS. RAVENER: Yes --

10 THE COURT: -- by any change?

11 MS. RAVENER: Yes.

12 THE COURT: And you're not moving on dangerousness;
13 correct?

14 MS. RAVENER: Correct.

15 THE COURT: So, Mr. Griffith, you may have heard a
16 version of this before but as you -- you'll hear it again from
17 me. The Bail Reform Act requires that I release you either
18 with or without conditions unless I determine that there are
19 no conditions that would reasonably assure your presence in
20 court when required or the safety of the community.

21 In this case the Government is concerned about your
22 appearance in court when required and consequently has
23 requested that you be detained without bail as a flight risk.

24 I must therefore determine whether there are any
25 conditions or combination of conditions that will reasonably

1 assure that you will be in court when you need to be in court.
2 In making this determination I am required to consider a
3 number of factors including the nature and circumstance of the
4 offense as charged, which I get from the complaint, the weight
5 of the evidence against you, which I may hear about from the
6 Government, your own history and characteristics and the
7 nature and seriousness of the danger to the community or the
8 right -- the risk of flight that may be presented by the facts
9 that will be laid out before me.

10 The Government ultimately bears the burden of
11 establishing that you are a flight risk and they need only
12 establish that by a preponderance of the evidence. That is
13 the standard that we use here. Because it is the Government's
14 burden I will ask the Assistant United States Attorney to
15 begin and to tell me why I should detain this defendant.

16 MS. RAVENER: Thank you, Your Honor. Mr. Griffith
17 should be detained because no conditions or combination of
18 conditions can reasonably assure his appearance in court
19 because a preponderance of the evidence shows he presents a
20 tremendous we submit unacceptable risk of flight.

21 First, Your Honor, Mr. Griffith's lack of community
22 ties. He has no known ties to the Southern District of New
23 York or the surrounding area.

24 THE COURT: Why was he charged in the Southern
25 District of New York?

1 MS. RAVENER: Your Honor, his venue was established
2 here in part because his conduct touched on --

3 THE COURT: Through the banking channels?

4 MS. RAVENER: I'm sorry?

5 THE COURT: Because of the banking channels touched
6 New York.

7 MS. RAVENER: I'm not sure about the banking
8 channels in this particular case, Your Honor, but part of the
9 matter by which the defendant traveled to North Korea we
10 believe [inaudible].

11 THE COURT: He changed planes in New York?

12 MS. RAVENER: No, Your Honor, not a change of planes
13 but other steps in order to acquire the ability to travel to
14 [inaudible] among other things.

15 But regardless, Your Honor, the fact that where the
16 case is charged is not necessarily what's at issue here.
17 What's at issue here is whether the defendant will appear for
18 prosecution.

19 THE COURT: And he's offering it, if I understand
20 it, to reside with his parents in Alabama where presumably he
21 does have ties.

22 MS. RAVENER: Well, Your Honor, we can speak to that
23 in the next couple of levels. Again, this is just one of many
24 reasons why we don't believe that bail is appropriate for this
25 defendant.

1 The defendant lived outside, completely outside the
2 United States for several years. He resides in Singapore.
3 During his time in the United States prior to his arrest he
4 had no stable or permanent residence. He was staying with a
5 variety of unknown persons in different cities and now he
6 proposes to reside with his parents in Alabama. He has not
7 resided there for quite some time as far as we are aware and
8 we expect that it would be difficult for Pretrial to insure
9 any kind of strict supervision about location. My
10 understanding from speaking with Pretrial Services is that
11 that supervision would essentially be delegated to the local
12 district to monitor Mr. Griffith.

13 THE COURT: Sure.

14 MS. RAVENER: And in order for him to appear in
15 court --

16 THE COURT: Is that the Northern District of
17 Alabama?

18 MS. RAVENER: I believe so, Your Honor. And that in
19 order for him to appear in court he would almost necessarily
20 have to fly there.

21 THE COURT: Of course.

22 MS. RAVENER: Now, once Mr. Griffith gets to an
23 airport all our ability, law enforcement's ability to control
24 which plane he gets on and insure that he does not flee
25 prosecution becomes very [inaudible] and incredibly difficult

1 to enforce. So there are logistical hurdles with the path
2 that's been proposed here. That's one factor among many.

3 In addition, he demonstrated that he has the ability
4 to obtain documents in order to flee.

5 THE COURT: Tell me about that.

6 MS. RAVENER: As part of this offense, Your Honor,
7 to that level [inaudible] provide some context. The defendant
8 is charged with participating in a conspiracy to evade the
9 United States [inaudible] against the Democratic People's
10 Republic of Korea, [inaudible] North Korea. As part of that,
11 Mr. Griffith is a crypto currency expert.

12 THE COURT: And a computer scientist.

13 MS. RAVENER: And a computer scientist, yes. Travel
14 to North Korea despite being informed by the State Department
15 that he did not receive permission to go, that they should not
16 travel there for his own safety and for other reasons, he
17 evaded that directive in part by securing a visa through
18 illicit means to travel to the DPRK.

19 THE COURT: What were the illicit means?

20 MS. RAVENER: Your Honor, he engaged in financial
21 transactions designed to avoid detection of his purchase of
22 that visa. By so doing he acquired a visa to travel to North
23 Korea. He insured that it would not appear on his United
24 States passport so as to further evade detection by
25 authorities here. And he found the means to travel illegally

1 to North Korea.

2 While there, and this is a significant part of the
3 offense, Your Honor, Mr. Griffith's furthered the conspiracy
4 to provide services to North Korea by way of educating the
5 North Korean government and others about how to establish
6 crypto -- a crypto currency exchange in North Korea for the
7 purpose of engaging in money laundering and [inaudible].

8 When he was questioned by the FBI voluntarily about
9 this travel, he informed them that he would be willing to do
10 it again. He remains [inaudible]. He was [inaudible] by his
11 activities. We have records indicating his discussions about
12 other means to travel. For example, he's repeatedly expressed
13 an intention to renounce his United States citizenship.

14 THE COURT: Expressed to whom?

15 MS. RAVENER: To family.

16 THE COURT: And you know this from?

17 MS. RAVENER: A search conducted of Mr. Griffith's
18 phone.

19 THE COURT: Okay.

20 MS. RAVENER: And in the course of those
21 communications Mr. Griffith described how he planned to
22 intentionally purchase citizenship from another country, a
23 Caribbean nation.

24 THE COURT: Which one?

25 MS. RAVENER: I believe it was St. Kitts, Your

1 Honor.

2 THE COURT: I thought St. Nevis was at the top of
3 the list these days.

4 MS. RAVENER: I may be having them mixed up.

5 THE COURT: Maybe they're one in the same, Nevis and
6 St. Kitts.

7 MS. RAVENER: They're close together, yes.

8 THE COURT: Go ahead.

9 MS. RAVENER: But in any event, Your Honor, no
10 matter where the defendant is located, and we'll speak further
11 about his expertise when it comes to technology or electronic
12 communication of crypto currency, it remains a troubling risk
13 that this defendant could seek citizenship and by [inaudible]
14 acquire a passport from another foreign nation that would
15 enable him to travel [inaudible] law enforcement here.

16 Again, the necessity of having him stay out of the
17 district [inaudible] right away only heightens the risk that
18 he would utilize those means to flee.

19 Further, his intention to renounce his U.S.
20 citizenship and [inaudible] purchase his [inaudible] from
21 another nation indicates the lack of respect for this country
22 and [inaudible] laws. This was all by the way, Your Honor,
23 before he even knew he was under investigation. So now that
24 he's under arrest [inaudible] to pursue these steps has
25 increased exponentially.

1 THE COURT: Well, presumably when he consented to a
2 search of his cell phone he knew he was under investigation.
3 That was in November. Correct?

4 MS. RAVENER: Correct, Your Honor.

5 THE COURT: So this was before then.

6 MS. RAVENER: Those are communications that were
7 located on the phone [inaudible].

8 THE COURT: Okay.

9 MS. RAVENER: In addition, this defendant has
10 substantial assets that he [inaudible].

11 THE COURT: Those assets include crypto currency
12 wallets and so forth.

13 MS. RAVENER: Correct, Your Honor. And that's
14 critical to the court's analysis here because all we have to
15 go on with respect to those assets are Mr. Griffith's own
16 admissions that he possesses at least \$250,000 worth of assets
17 that are almost entirely contained in crypto currency
18 exchanges. He did not identify those exchanges to Pretrial
19 Services. He did not identify that currency to Pretrial
20 Services.

21 THE COURT: And you found out about them from his
22 family?

23 MS. RAVENER: No, Your Honor. This is based on the
24 analysis of the Pretrial Services report but I can speak to
25 some other information of how [inaudible] the financial

1 [inaudible].

2 THE COURT: Let me go back for a moment if you don't
3 mind. I'm sorry to keep jumping you around.

4 MS. RAVENER: No problem.

5 THE COURT: But I want to go back to a moment to
6 what you said about him procuring a visa through elicited means.
7 All it says in the complaint, which was sworn to by a law
8 enforcement officer, is that he purchased the visa from the
9 North Korean mission or consulate or whatever it is that they
10 have here for 100 Euros. What is elicited about that?

11 MS. RAVENER: Your Honor, my understanding is that
12 he engaged in financial transactions in order to hide his
13 payment for that purchase in different currencies.

14 THE COURT: What? What? What did he do?

15 MS. RAVENER: Your Honor, that's the extent of the
16 detail I can provide on that particular transaction now.

17 THE COURT: You also told me -- I think you told me
18 that he was advised by the Government not to go to North Korea
19 but he did anyway. It says in Paragraph 18 of the complaint
20 that he did not seek or receive approval from OFAC to travel.

21 MS. RAVENER: So that's a separate matter, Your
22 Honor.

23 THE COURT: That's just OFAC?

24 MS. RAVENER: OFAC is --

25 THE COURT: What branch of the Government told him

1 not to go?

2 MS. RAVENER: So with respect to being advised not
3 to go that's from the State Department, and again Mr.
4 Griffith's communication [inaudible] cell phone request that
5 he understood he was advised [inaudible] the State Department
6 to travel to North Korea let alone to travel there for this
7 purpose of [inaudible] conspiracy yet he did so anyway. OFAC
8 has a separate licensing regime that is part of the technical
9 requirement of this offense and he didn't receive that
10 [inaudible].

11 THE COURT: All right.

12 MS. RAVENER: That's administered by the Department
13 of the Treasury.

14 Turning to his assets, Your Honor, we have only
15 credibly obtained information that Mr. Griffith provided to
16 Pretrial Services very little detail and what it does tell us
17 though is what we already know which is that Mr. Griffith has
18 significant assets that are all contained in crypto currency
19 which is by definition virtually untraceable and as his
20 employer, the Ethereum Foundation, advertises accessible
21 anywhere in the world. Mr. Griffith provides no accounting of
22 how much money in Ether [inaudible] currency he has. He
23 provides --

24 THE COURT: Which he presumably has some being an
25 employee.

1 MS. RAVENER: Correct, Your Honor. We believe so
2 and his communications indicate that he and his family have
3 substantial investments in Ether.

4 THE COURT: Well, according to the Pretrial Services
5 report the defendant stated that he had as you say
6 approximately \$250,000 worth of assets, not all of which are
7 digital. According to Pretrial he stated that he had 120,000
8 in crypto currency exchanges, 65,000 in a digital cold storage
9 wallet, and another 65,000 in old fashioned savings accounts,
10 one in Singapore and one in Puerto Rico.

11 MS. RAVENER: Correct, Your Honor. And even taking
12 that at face value, those are assets significant enough to
13 permit this defendant to flee.

14 THE COURT: And outside of the country.

15 MS. RAVENER: To flee, and of course our perspective
16 is that these assets may not even encompass Mr. Griffith's
17 full wealth --

18 THE COURT: Because you don't know what you don't
19 know.

20 MS. RAVENER: -- because these are self reported.
21 Right. And because of the lack of detail that he opted to
22 provide to Pretrial in reporting these assets. He gives no
23 numbers with respect to these particular currencies as I said
24 or what kind of currencies they are. He describes that he
25 does have a salary from the Ethereum Foundation of \$150,000

1 annually but that he also receives some kind of consulting
2 income. He provides no information or data about that
3 consulting income.

4 THE COURT: So he's provided no banking records or
5 employment records you're telling me.

6 MS. RAVENER: Correct. As far as we can tell, Your
7 Honor.

8 Now, coupling that information with what we know
9 about Mr. Griffith, which is that again he's a crypto currency
10 expert who's used his own expertise already to commit an
11 offense that is all about hiding assets, engaging secretive
12 untraceable illicit transactions for the purpose of laundering
13 money, evading the United States sanctions and rules.

14 He has referred to himself in text message
15 communication uncovered by the Government's investigation as a
16 maintainer of the world's largest portal to the dark web.

17 THE COURT: Who did he say that to?

18 MS. RAVENER: I believe to the parents, Your Honor.

19 THE COURT: In text?

20 MS. RAVENER: Yes.

21 THE COURT: Okay.

22 MS. RAVENER: Your Honor, as part of the offense he
23 documented his own plans to attempt to disguise his support to
24 the DPRK as some kind of humanitarian aid to be passed from
25 South Korea to North Korea. Another means of hiding money

1 intended for elicit purposes.

2 Again, communications with his parents. His parents
3 have described that his assets are 99 percent in untraceable
4 unreported crypto currencies. That's as of approximately
5 March 2018. We have no way of confirming the scope of his
6 actual wealth and no way of securing those funds so that he
7 cannot use them to flee. They are by nature untethered to the
8 financial system and outside of the Government's reach and
9 that is exactly why Mr. Griffith uses them.

10 Just to give Your Honor a sense of the scope of
11 these things because another factor here is that while Mr.
12 Griffith may say -- may place a value on that crypto currency
13 to Pretrial Services today, these are values that fluctuate
14 quite widely.

15 THE COURT: I understand they're very volatile or
16 they can be.

17 MS. RAVENER: So just to give Your Honor an example
18 of the scope of how [inaudible] range. Reports today, Your
19 Honor, describe that there's a spike in some markets fears
20 because a large stakeholder in Ether, the [inaudible] currency
21 that Mr. Griffith --

22 THE COURT: May or may not possess.

23 MS. RAVENER: -- traffics in -- a large stakeholder,
24 an unidentified stakeholder against selling off enormous
25 amounts of Ether on Christmas Day, yesterday.

1 THE COURT: And you are suggesting that this
2 defendant may be that mysterious stakeholder or may not be.

3 MS. RAVENER: We don't know that, Your Honor, but
4 what we do know is just by way of example that that can happen
5 at a moment's notice. And what these reports indicate is that
6 those -- that sudden effort to sell of a large piece of a
7 stakeholder's interest in Ether is worth \$25 million standing
8 here today.

9 Now, what will it be worth tomorrow? We don't know
10 but that is how much this kind of currency can be worth for a
11 large stakeholder and a person with expertise in this kind of
12 technology, and that is exactly the kind of expertise and
13 exposure that Mr. Griffith has had and the kind of social
14 connections worldwide that Mr. Griffith has.

15 THE COURT: So let me get more granular with you.
16 You believe he may have access to substantial liquid and
17 untraceable sums of money or assets that can be converted
18 quickly into United States or other national currencies and
19 you believe he does not respect the law and will be looking
20 for a way to evade the law. How does he get out of the
21 country?

22 MS. RAVENER: Well, Your Honor, that's where the
23 challenge of this proposal to have Mr. Griffith reside in a
24 separate state that would require flight in order to come
25 here, permitted flight in order to come here.

1 THE COURT: Let's assume we can solve that problem.
2 Let's assume that he offers through his counsel today to rent
3 an apartment in New York and subject himself to house arrest
4 there.

5 MS. RAVENER: Well, Your Honor, I think they're
6 still running into a serious risk of flight because Mr.
7 Griffith has the means, the financial means --

8 THE COURT: Right.

9 MS. RAVENER: -- the technological capability and
10 matrix.

11 THE COURT: Has he ever traveled under a false
12 passport or a false name that you know of?

13 MS. RAVENER: We know that he has changed his name,
14 Your Honor, that he's --

15 THE COURT: But he's changed his name legally for
16 vanity purposes, correct --

17 MS. RAVENER: As far as we know, yes.

18 THE COURT: -- some time ago.

19 MS. RAVENER: But, Your Honor, again, a person who
20 is able to secure [inaudible] without U.S. Government
21 permission to --

22 THE COURT: For 100 Euros apparently.

23 MS. RAVENER: -- to the DPRK --

24 THE COURT: But he traveled on his own passport
25 under his own name; correct?

1 MS. RAVENER: Your Honor, I don't believe -- I have
2 to check on whether he utilized his United States passport in
3 order to do so. I believe that he traveled on his own name.
4 He was assigned a North Korean government handler while there.

5 THE COURT: Right.

6 MS. RAVENER: So this entire event and his
7 [inaudible] in it was orchestrated in concert with those
8 authorities. Someone who's capable of having that kind of
9 access is certainly capable of obtaining a means to flee from
10 the United States either by plane or other means.

11 As we discussed, he has expressed an interest in --

12 THE COURT: You think the South Korean government is
13 going to send a private plane for him?

14 MS. RAVENER: I'm sorry, Your Honor?

15 THE COURT: You think the South Korean government --
16 the North Korean government, excuse me, is going to send a
17 private plane for him and obscure him out of the country?

18 MS. RAVENER: Your Honor, I'm not suggesting any
19 particular scenario. What we are indicating is that he has
20 expressed an interest in purchasing citizenship elsewhere
21 which would result in him acquiring passports from another
22 country whether that can be done in a different name or some
23 other means that we cannot [inaudible] ineffectively. It's --
24 all it takes is one mistake at the border for Mr. Griffith to
25 be able to cross over and for us to lose the ability to bring

1 him back to face justice.

2 THE COURT: Okay.

3 MS. RAVENER: Mr. Griffith's incentives to do that
4 are incredibly high. He apparently believes that he had a
5 strong incentive to renounce his U.S. citizenship before he
6 was arrested. Now he faces accountability and potential
7 prison time in addition to other sanctions as a result of his
8 commission of the instant offense.

9 So to the extent he sought to expatriate and avoid
10 contact with the United States and the United States Marshals
11 before his arrest that incentive just increased by orders of
12 magnitude. He was not taking this seriously previously, Your
13 Honor.

14 THE COURT: Well, I'm sure he's about to tell me
15 that that's all changed and he now takes it very, very
16 seriously.

17 MS. RAVENER: Well, we'll hear it I'm sure from the
18 defense, Your Honor, but in the meantime those are our very
19 serious concerns about this defendant's assets, capability and
20 interest in fleeing prosecution.

21 THE COURT: But as far as you know he has not up
22 until now traveled under a false name or a false passport;
23 right?

24 MS. RAVENER: I don't have that information no, Your
25 Honor.

1 THE COURT: All right. And the way he got to North
2 Korea as far as you are able to tell me today was by obtaining
3 a visa from North Korea against the advice and the laws of the
4 United States in your view but obtaining a visa for 100 Euros
5 in his own name and having it stamped on a separate piece of
6 paper.

7 MS. RAVENER: Which he avoided attaching to his
8 United States passport.

9 THE COURT: Right.

10 MS. RAVENER: Yes. So therefore it was unknown to
11 the United States authorities.

12 THE COURT: Right. With no criminal record, what
13 would the guidelines say here?

14 MS. RAVENER: Your Honor, we believe that the
15 guidelines at this time although the investigation is ongoing
16 are approximately 15 to 21 months incarceration but of course
17 the Court I'm sure is aware that for someone like Mr. Griffith
18 who prior to now has never spent any time in prison that is a
19 severe sanction that could cause someone to flee because any
20 amount of prison time for someone who has not yet experienced
21 that is a drastic change in their circumstances and as we said
22 before Mr. Griffith was highly motivated to avoid U.S. law
23 enforcement previously before this arrest.

24 THE COURT: Right. I got that point.

25 MS. RAVENER: And how that incentive has increased.

1 The prison time he faces regardless of amount only enhances
2 that.

3 The other thing, Your Honor, that I think we need to
4 address is the particular circumstances that are proposed by
5 the defense with respect to a bail package. I'll reserve on
6 that if the Court permits.

7 THE COURT: Sure. I'll hear the --

8 MS. RAVENER: So our position is detention.

9 THE COURT: I'll hear the proposal from the defense
10 and I'll come back to you for a response.

11 MS. RAVENER: Thank you, Your Honor.

12 THE COURT: Mr. Buckley.

13 MR. BUCKLEY: Yes. Thank you, Your Honor. So as
14 the Court noted at the outset the burden is on the Government
15 to establish risk of flight by a preponderance.

16 THE COURT: By a preponderance.

17 MR. BUCKLEY: Respectfully, Judge, nothing about
18 what Ms. Ravener has said carries that burden. She went on at
19 length about crypto, crypto currency and the fact that Dr.
20 Griffith uses crypto currency. There's nothing illegal about
21 using crypto currency.

22 THE COURT: Why didn't he provide the Government
23 with a fuller accounting of his crypto assets?

24 MR. BUCKLEY: He wasn't asked. In fact, during the
25 Pretrial Services interview, Your Honor --

1 THE COURT: And it didn't occur to you or to him?

2 MR. BUCKLEY: -- he was trying to volunteer
3 additional information about the type of crypto exchanges
4 which is reflected in the Pretrial Services report on which --
5 in which he had those accounts.

6 As far as the specifics of the accounts, if that's
7 something that is important for the Court, we can work -- put
8 together a list of those accounts for the Court but the mere
9 fact that he uses crypto currency along with millions of other
10 people throughout the world by no means supports this idea
11 that he's a risk of flight or that he's taking affirmative
12 measures to conceal assets for any use, let alone fleeing
13 these charges.

14 The Government has made reference to these vague
15 substantial assets that would allow him to flee. He's
16 outlined what he believes his assets are. We can get
17 additional details on that for the Court's consideration but
18 even if that quantity identified in the Pretrial Services
19 report is considered substantial, and respectfully I think a
20 lot of that is in the eye of the beholder, we would submit
21 that the remedy for that is by setting a condition of release
22 that would require him or his loved ones to have to forfeit an
23 amount in excess of that amount, and that's what we proposed
24 here.

25 I think it's telling, Your Honor, that in this

1 case --

2 THE COURT: What do you mean forfeit an amount in
3 excess?

4 MR. BUCKLEY: If he were to flee. Have them sign a
5 bond, an appearance bond in an amount that exceeds --

6 THE COURT: You just mean an ordinary appearance
7 bond.

8 MR. BUCKLEY: Yes, an ordinary appearance bond
9 secured by --

10 THE COURT: If your client -- if your client flees
11 mom and dad lose their equity in their house. How does that
12 help if there are a few million dollars in Ethers?

13 MR. BUCKLEY: I'm sorry, Your Honor. I couldn't
14 hear you.

15 THE COURT: I think the point that Ms. Ravener is
16 trying to make, and you'll correct me if I'm wrong, is that in
17 addition to the tangible assets that the Government knows
18 about and can put a lien on such as the home, the parents'
19 home and so forth, there may be assets substantially in excess
20 of that amount that the Government doesn't know about and by
21 definition can't know about which may make the value of the
22 equity in the defendant's parents' home pale in comparison.
23 It might be a sensible choice under the circumstances to risk
24 the home because there are more assets elsewhere.

25 MR. BUCKLEY: Understood, Your Honor, and if there

1 was anything to that point beyond pure speculation I think
2 then that argument might hold water and might perhaps support
3 the preponderance standard but beyond the fact that he's
4 engaged in crypto exchanges and crypto currency there's
5 nothing to substantiate that speculation. This is the
6 Government's --

7 THE COURT: No, he's not someone who's simply
8 investing crypto currency. He is someone who designs crypto
9 currency exchanges for a living. Correct?

10 MR. BUCKLEY: That's correct.

11 THE COURT: That does put him in a slightly
12 different position from someone who merely invests in crypto
13 currencies among other things particularly since the crime of
14 which he's accused involves furnishing advice, know-how and
15 expertise regarding establishing crypto currency exchanges to
16 a regime with which the United States prohibits such commerce.

17 MR. BUCKLEY: That is the allegation of the
18 complaint.

19 THE COURT: That is the allegation.

20 MR. BUCKLEY: We dispute the allegations of the
21 complaint obviously, Judge. But nevertheless, while those
22 factors may apply not uniquely by any means. Crypto currency
23 is one of the biggest developing markets right now and there
24 are plenty of people who might not have as well credentialed a
25 background as Dr. Griffith but plenty of people who engage

1 with these crypto exchanges, who program these crypto
2 exchanges, who run these crypto exchanges, and it can't simply
3 be that by virtue of being engaged with a crypto exchange you
4 somehow have a heightened showing under the Bail Reform Act as
5 to why bail is appropriate in this case.

6 THE COURT: No, the showing remains the same. The
7 question is whether the crypto currency investments and
8 expertise along with the other factors that the Government
9 cited to me meet the Government's relatively low more likely
10 than not preponderance burden.

11 So perhaps you should discuss some of the other
12 factors that the Government brought up, namely the manner in
13 which he traveled to North Korea, the things he said about
14 what he was doing there and what he planned to do in the
15 future, the statements he is said to have made about
16 renouncing his U.S. citizenship and/or purchasing citizenship
17 elsewhere.

18 MR. BUCKLEY: Well, Your Honor, on each of those
19 points, and we have requested pre-indictment discovery from
20 the Government for that exact reason because we are relying
21 upon the portions of statements cited in the complaint. We
22 have not seen the underlying statements. We don't know if
23 they're taken out of context, if they are being
24 mischaracterized or if they are just incorrect. The
25 statements regarding, for example, renunciation of U.S.

1 citizenship I think Ms. Ravener said came from a search of his
2 cell phone --

3 THE COURT: Correct.

4 MR. BUCKLEY: -- which we don't have. So we would
5 need discovery in order to address the merits of those
6 statements but it's our position that those statements are in
7 fact being taken out of context.

8 I do think it's telling, Judge, that two separate
9 Pretrial Services offices, first Central District of
10 California and then here in the Southern District of New York
11 had determined that in spite of the charges and in spite of
12 his crypto background that he is an appropriate candidate for
13 release under the Bail Reform Act.

14 THE COURT: So defense attorneys make this argument
15 to me all the time as you can imagine and I find myself
16 reminding defense attorneys frequently that one of the -- at
17 least one of the factors which I am required to take into
18 account under the Bail Reform Act the strength of the evidence
19 is not known to or really accessible by Pretrial Services and
20 often as appears to be the case here as well some of the
21 evidence related to flight risk which is intertwined with the
22 merits evidence is simply not known to Pretrial Services. So
23 bear that in mind.

24 MR. BUCKLEY: But -- I understand that, Judge, but
25 here we have two separate Pretrial Services offices as well as

1 a magistrate judge in the Central District of California who
2 was able to hear these arguments from the Government about the
3 strength of its case and the nature of the case and determined
4 that he should be released on conditions.

5 THE COURT: Well, speaking of prior determinations
6 by judges, a United States District Judge in this district
7 felt otherwise. So perhaps one question I should ask you now
8 is what new information do you have to present to me that
9 would suggest to me that Judge Cote was wrong.

10 MR. BUCKLEY: Yes, Your Honor. Respectfully here,
11 and I'm not looking to fault Judge Cote or anybody else.
12 Judge Cote was not provided with the record in this case.
13 Judge Cote was not provided with the Pretrial Services report.
14 Judge Cote was not provided with a copy of the bail
15 transcript.

16 THE COURT: From California?

17 MR. BUCKLEY: From California, correct.

18 THE COURT: Neither was I.

19 MR. BUCKLEY: Understood, Your Honor, but you have
20 the benefit of the Pretrial Services report and you have the
21 benefit of argument from counsel. Judge Cote was provided
22 when she issued her order of staying it, not overturning the
23 determination, just staying it until arrival in this district
24 was provided with a letter from the Government attaching a
25 copy of the complaint. Nothing further. None of the factors

1 that need to be required under the Bail Reform Act which are
2 now in front of you in the form of Pretrial Services. Two
3 separate reports from two separate Pretrial Services offices,
4 Your Honor that outline the relevant factors that go through
5 the analysis and that independently come to a conclusion that
6 this is a defendant who should be released on an appearance
7 bond secured by cash or property.

8 So respectfully, Judge, I think that's what's
9 different between what's being presented here to the Court and
10 what was presented to Judge Cote.

11 THE COURT: So what you're telling me is that Judge
12 Cote didn't have as much information as the magistrate judge
13 did in California or as I do.

14 MR. BUCKLEY: That's correct, Your Honor.

15 THE COURT: But the question I asked you was has
16 anything changed since the magistrate judge in California made
17 that determination.

18 MR. BUCKLEY: No, Your Honor, other than my client
19 has been incarcerated since Thanksgiving Day and has been
20 transported to this district.

21 THE COURT: So your showing has not improved since
22 then. For example, even though as you say it's been a month
23 and I assume that you are an experienced and knowledgeable
24 defense counsel it didn't occur to you or your client to
25 provide the Government or Pretrial Services here in New York

1 with greater transparency into your client's assets.

2 MR. BUCKLEY: Judge, this is the first time that I'm
3 standing here that I've heard that concern from the
4 Government.

5 THE COURT: Okay.

6 MR. BUCKLEY: So as I said, it's certainly something
7 that we can address and provide additional disclosures
8 regarding but that was not raised as a concern in the Central
9 District of California and today is the first time that I've
10 heard it relied upon at such length.

11 THE COURT: Where would your client live?

12 MR. BUCKLEY: As proposed we would have our client
13 live in Alabama with his parents at their residence.

14 THE COURT: What's your second choice?

15 MR. BUCKLEY: He could reside -- give me one moment.

16 [Pause in proceedings.]

17 MR. BUCKLEY: There's a residence here in the
18 Southern District of New York where he could stay.

19 THE COURT: Whose residence?

20 MR. BUCKLEY: A friend of his.

21 THE COURT: He would live with a friend?

22 MR. BUCKLEY: Yes, Your Honor.

23 THE COURT: Has the friend been consulted about
24 this?

25 MR. BUCKLEY: Not yet, Your Honor.

1 THE COURT: Where does the friend live?

2 [Pause in proceedings.]

3 MR. BUCKLEY: In Manhattan, Your Honor, off of Bed
4 City.

5 THE COURT: All right. What else do you propose?

6 MR. BUCKLEY: As far as the conditions? It would be
7 co-signed by three financially responsible people.

8 THE COURT: Two of whom are his mother and his
9 father.

10 MR. BUCKLEY: Who are here today in court, Your
11 Honor.

12 THE COURT: Ma'am, sir, thank you for coming.

13 MR. BUCKLEY: And the third would be his sister, his
14 only sibling who resides in -- outside of --

15 THE COURT: And each of them is willing to put up
16 their home; correct?

17 MR. BUCKLEY: That's correct, Your Honor. As well
18 as if the Court would require I know that Dr. Robert Griffith
19 is prepared to put up cash if that's easier for the Court or
20 more expeditious.

21 THE COURT: Anything else?

22 MR. BUCKLEY: The only other point I would make,
23 Judge, is that with regard to the sentence that he faces --

24 THE COURT: The potential guidelines, yes.

25 MR. BUCKLEY: Yes, the potential guidelines. Ms.

1 Ravener actually stated that based on the allegation in the
2 complaint it's currently calculated at 15 to 21 months.
3 That's not with acceptance of responsibility. With acceptance
4 of responsibility he would fall into Zone B which would be 8
5 to 14 months.

6 THE COURT: Okay. And is there anything in the
7 record thus far indicating acceptance of responsibility on
8 your client's part? Ms. Ravener indicates that statements
9 made thus far, including statements made to the family,
10 indicate the opposite or to be more precise, indicate lack of
11 recognition or remorse.

12 MR. BUCKLEY: Okay. Yes, Your Honor, there is in
13 the record ample to show acceptance of responsibility.
14 Immediately after the time period alleged in the complaint the
15 defendant walked into the State Department and self reported.
16 He was then contacted by the FBI and the FBI asked him to come
17 to New York to participate in a voluntary interview. The
18 defendant traveled to New York and spoke with the FBI at
19 length. He traveled on his own money to New York in order to
20 meet with the FBI. That was followed by the subsequent
21 meeting which is the November 12th meeting set forth in the
22 complaint which occurred in San Francisco where again he
23 agreed to be interviewed at length by the FBI.

24 Indeed I think something that the Court should be
25 aware of is that in advance of his arrest on I believe it was

1 November 25th prior counsel for Dr. Griffith was actively
2 engaged in discussions with the U.S. Attorney's Office to set
3 up a follow up meeting.

4 THE COURT: This U.S. Attorney's Office --

5 MR. BUCKLEY: This U.S. Attorney's Office yes, Your
6 Honor, including one of the AUSA's who signed this complaint
7 that occurred on approximately November 25th and then he was
8 arrested two days later on Thanksgiving Day.

9 In each of those interviews, and I don't believe Ms.
10 Ravener or anybody from the Government, certainly not set
11 forth in the complaint, has contended that he was dishonest or
12 evasive or concealing facts. Instead the allegations of the
13 complaint if true suggests that he made substantial statements
14 to the FBI. So I think that there is ample evidence of record
15 that shows acceptance of responsibility here.

16 With regard to the issue surrounding renunciation of
17 citizenship or obtaining a passport from a different country,
18 I do think it's telling that while Dr. Griffith has resided in
19 Singapore for the past three to four years for work purposes
20 he otherwise has been a lifelong resident of the United
21 States. Born and raised in Alabama. Spent a brief spell in
22 Pennsylvania while his parents were doing their residencies as
23 medical doctors, and then he's educated in Indiana and at Cal
24 Tech. So he has substantial ties to this community, and it's
25 also worth noting that in addition to residing in Singapore he

1 does own a residence in Puerto Rico and part of the context --

2 THE COURT: Why does he own a residence in Puerto
3 Rico?

4 MR. BUCKLEY: So that's part of the context here is
5 discussions surrounding renunciation of citizenship there are
6 number of reasons that individuals seek to renounce
7 citizenship, not the least of which is ex [inaudible] living
8 abroad who don't want to be subject to United States taxes
9 while paying taxes in a separate regime.

10 THE COURT: Sure. There are lots of reasons other
11 than evading criminal law enforcement to seek citizenship in
12 another jurisdiction but when the person seeking citizenship
13 or talking about seeking citizenship in another jurisdiction
14 happens to be under arrest and is in the midst of discussions
15 about whether he is a flight risk or not you can't ignore
16 that.

17 MR. BUCKLEY: Understood. I'm not suggesting that
18 the Court ignore it but the reason for the property in Puerto
19 Rico is that while certain of his colleagues had suggested to
20 him that it would be important that you renounce citizenship
21 or obtain citizenship in a different jurisdiction rather than
22 taking that step Dr. Griffith purchased property in Puerto
23 Rico.

24 THE COURT: That's the United States.

25 MR. BUCKLEY: It's a protector of the United States.

1 THE COURT: Yes.

2 MR. BUCKLEY: Yes, Your Honor. It's subject to --

3 THE COURT: I'm not following your logic. He's
4 still subject to federal tax.

5 MR. BUCKLEY: It's subject to a different tax regime
6 is the point.

7 THE COURT: So you're saying that it's favorable
8 compared to mainland United States but not as favorable as
9 some offshore tax havens.

10 MR. BUCKLEY: That is one explanation, yes.

11 THE COURT: And you're suggesting that he purchased
12 property in Puerto Rico because he was willing to move
13 offshore to a U.S. protector but not willing to renounce his
14 U.S. citizenship.

15 MR. BUCKLEY: That's correct, Judge. Puerto Rico
16 also is a developing area in the crypto space and given his
17 job it also made sense for that reason.

18 THE COURT: Has he ever lived there?

19 MR. BUCKLEY: In Puerto Rico?

20 THE COURT: Yes.

21 MR. BUCKLEY: When he attended the first meeting
22 with the FBI he was traveling from his residence in Puerto
23 Rico to Manhattan.

24 THE COURT: No. I mean lived there. Not spent the
25 night there. Lived there.

1 MR. BUCKLEY: He has lived predominantly for the
2 past three to four years in Singapore, Judge.

3 THE COURT: Which is where Ethereum has him working;
4 correct?

5 MR. BUCKLEY: That's correct, Your Honor.

6 THE COURT: And he rents an apartment there?

7 MR. BUCKLEY: And I'm sorry, Judge.

8 THE COURT: And he rents an apartment in Singapore?

9 MR. BUCKLEY: He rents an apartment in Singapore,
10 that's correct.

11 THE COURT: Anything else?

12 MR. BUCKLEY: If I could just have a moment.

13 [Pause in proceedings.]

14 MR. BUCKLEY: The only other item I would note, and
15 as the court noted, after the November 12th interview with the
16 FBI he clearly understood that he was under investigation
17 since they took his phone and had suggested that that was the
18 case and given that his counsel was engaged with this U.S.
19 Attorney's Office regarding his case, prior to traveling from
20 California where he was arrested he had been instructed by the
21 FBI not to return to his residence in Singapore until they had
22 an opportunity to speak further with him and he did exactly
23 that, Judge. He listened to the FBI agent. He didn't
24 purchase a return ticket. He waited to hear from them and he
25 had counsel engage with the U.S. Attorney's Office even to the

1 degree that they sent his itinerary for his flight from Los
2 Angeles to Baltimore Washington International Airport to the
3 AUSA's prior to his travel in order to make a showing of good
4 faith and the trip from L.A. when he was arrested at L.A., he
5 wasn't seeking to leave the country. He was seeking to fly to
6 Baltimore to celebrate Thanksgiving with his family at his
7 sister's house outside of Baltimore.

8 THE COURT: Thank you. Ms. Ravener, I'd like you to
9 start [inaudible] addressing -- sorry, we have a new
10 microphone that I haven't gotten the hang of it yet. It's
11 down low -- by addressing counsel's representations regarding
12 Mr. Griffith's cooperation, voluntary cooperation with law
13 enforcement since he came under investigation including his
14 voluntary surrender.

15 MS. RAVENER: Yes, Your Honor. So it is true that
16 Mr Griffith met voluntarily with the FBI on two occasions at
17 which he made certain statements to the FBI as documented in
18 the complaint which was before you, before the Central
19 District of California magistrate and before Judge Cote.

20 In terms of any further discussions, once Mr.
21 Griffith retained counsel yes, our office was engaged in
22 contact with that counsel but no, there was no -- we were not
23 informed to my knowledge that there would be any further
24 cooperation from Mr. Griffith or any meeting. So that is
25 where things stood prior to Mr. Griffith's arrest.

1 I'm happy to address the Court's other questions or
2 move on to a few other points.

3 MR. BUCKLEY: Judge --

4 THE COURT: Is it true that after being asked not to
5 leave the country by the FBI for a period of time for
6 questioning the defendant did not leave the country and kept
7 the FBI or other law enforcement agencies apprised of his
8 travels within the United States?

9 MS. RAVENER: I don't think it's accurate to say
10 that he kept law enforcement fully apprised of his travels
11 within the United States. I believe that at one point, at
12 least one point in time we were unable to locate Mr. Griffith
13 and became very concerned and at that point in time counsel
14 was contacted and he did provide travel information for Mr.
15 Griffith.

16 THE COURT: That was the flight to Baltimore?

17 MS. RAVENER: Yes.

18 THE COURT: Okay.

19 MS. RAVENER: Just to provide some additional
20 context. So yes, there has been contact with Mr. Griffith by
21 law enforcement. There has been contact with counsel. That
22 was a prior counsel to Mr. Buckley and Mr. Buckley has co-
23 counsel in L.A. who we also have been in contact with since
24 Mr. Griffith's arrest.

25 THE COURT: All right.

1 MS. RAVENER: A couple of other key points. I think
2 first of all Your Honor touched on a key issue here which is
3 that at a minimum the defendant has not given adequate
4 financial information to [inaudible] proposed bail package.

5 THE COURT: When did your office make defense
6 counsel aware of your concerns hinging on those facts as you
7 did to me today?

8 MS. RAVENER: Your Honor, we have spoken with Mr.
9 Buckley's co-counsel in Los Angeles about that [inaudible]
10 separate locations including prior to his presentment in the
11 Central District of California and the fact that he
12 [inaudible] any of Mr. Griffith's resources made it very
13 difficult to assess any possible proposal and gave us
14 discomfort with the bail package proposed in the Central
15 District of California [inaudible] concern here today.

16 Among other things, we've now also learned that Mr.
17 Griffith may very well have misled Pretrial Services in the
18 Central District of California which states in the Pretrial
19 Services report at Page 3 the defendant does not own property.
20 We've now heard that actually the defendant does own some kind
21 of property in Puerto Rico.

22 THE COURT: Is this new news to you this evening?

23 MS. RAVENER: Your Honor, I'm aware of it through --
24 I'm aware that it was a possibility through our investigation
25 because among other things and another fact to share with the

1 Court is that we aware that Mr. Griffith holds at least one
2 shell company which is domiciled in Puerto Rico which he
3 refers to as a shell company. So that is just one more
4 example, Your Honor, of how Mr. Griffith has either in a
5 generous reading provided insufficient information but there
6 is also evidence that would permit this Court to [inaudible]
7 Mr. Griffith has provided misleading information in the course
8 of his Pretrial Services interviews and preparation for his
9 bail application.

10 That's [inaudible] troubling particularly when it's
11 overlaid in the context of Mr. Griffith's expertise in crypto
12 currency and other forms of technology that would permit him
13 to evade law enforcement detection and apprehension.

14 As another example of that, Your Honor, again this
15 is derived from Mr. Griffith's cell phone and our ongoing
16 investigation, only approximately a month ago Mr. Griffith
17 appears to have encountered some difficulties in his workplace
18 and informed his parents that perhaps he'd leave his job and
19 "sell a money a laundering company in North Korea as an
20 alternative." This kind of conduct and contemplation by the
21 defendant of fleeing to unreachable places, to engage in
22 further criminal acts using untraceable hidden means in which
23 he possesses highly skilled expertise makes him an
24 unacceptable flight risk.

25 He should be detained. It is the only means to

1 assure his appearance in court here in this district for
2 prosecution. Should the Court consider however any of the
3 defendant's proposals with respect to release, we would again
4 ask to be heard and we'd ask Your Honor for that opportunity
5 at the appropriate time.

6 THE COURT: Mr. Buckley, when did your client first
7 disclose his residence in Puerto Rico to any government
8 authority?

9 MR. BUCKLEY: So, Your Honor, I don't believe I said
10 he owned the residence and I'd like -- I misspoke. He rented
11 the residence and he disclosed that on the Pretrial Services
12 report.

13 THE COURT: So he doesn't own any property?

14 MR. BUCKLEY: He does not own it. He rents it.

15 THE COURT: What's the point of renting a place in
16 Puerto Rico? What's the tax advantage if you're not actually
17 living there?

18 [Pause in proceedings.]

19 MR. BUCKLEY: He was considering eventually moving
20 to live there full time.

21 THE COURT: Does he rent any property elsewhere in
22 this country or outside of it where he's considering living
23 full time?

24 [Pause in proceedings.]

25 MR. BUCKLEY: He rents property in Puerto Rico and

1 he rents property in Singapore. He doesn't own or rent any
2 other properties here in the United States or elsewhere.

3 THE COURT: Any brief response?

4 MS. RAVENER: Your Honor, our only evidence of that
5 is the defendant's own word and it's simply not enough to
6 overcome the preponderance of the evidence here which
7 demonstrates that he's a flight risk with global connections
8 and assets that enable him for example to rent an apartment
9 that he's barely ever resided at and rarely goes to. That's a
10 person who has the ability to acquire real estate abroad as a
11 means of pursuing flight and prosecution. He can facilitate
12 that by accessing his digital wallet anywhere in the globe
13 with a touch of a few keys on a computer. That's precisely
14 why Mr. Griffith cannot be released on conditions, why there's
15 no combination of conditions that can give this Court comfort
16 that he will appear and abide by the conditions set for him.

17 THE COURT: Anything else?

18 MR. BUCKLEY: Yes, Your Honor. I wanted to address
19 the contemplated meeting that didn't occur because they
20 arrested Dr. Griffith on Thanksgiving Day. But the
21 communications between counsel and the AUSA at the Southern
22 District of New York very clearly contemplated such a meeting.
23 They discussed trying to schedule something for the week of
24 Thanksgiving. Dr. Griffith's prior counsel was unable to do
25 so because it's a Thanksgiving holiday and the AUSA replied "I

1 hope you're enjoying the week off and understood. We would,
2 however, like to set something up quickly thereafter so we can
3 do that while you're away. What days, locations might work
4 for you?" There very clearly was a meeting contemplated here,
5 a meeting that Dr. Griffith was willing to attend. This was
6 the correspondence that included the flight for his
7 Thanksgiving Day flight to join his family in the Baltimore
8 area and I believe Dr. Griffith also provided his prior
9 counsel with flight information to send to the FBI and the
10 U.S. Attorney's Office of his flight from Oakland to Burbank
11 that preceded that flight from L.A. to Baltimore Washington
12 International. So there were at least two instances where he
13 provided travel information.

14 THE COURT: Right. Thank you both very much.

15 [Pause in proceedings.]

16 THE COURT: This case like many bail cases that come
17 before me is not an easy one. Having listened, however, to
18 all of the arguments and proffers by counsel for both sides, I
19 come to the conclusion that based on what I know now there are
20 no conditions I can impose that will reasonably assure this
21 defendant's appearance as required in connection with this
22 case.

23 I make that decision based on all of the facts which
24 have been presented to me including those in the California
25 and New York Pretrial Services report, the allegations of the

1 complaint sworn to by a law enforcement agent, and the
2 representations made to me by counsel.

3 To just -- for the edification of counsel I will
4 simply touch on a few of the factors which I found of
5 significance which is not to say that other factors were not
6 also of significance but these stood out to me.

7 I do find it difficult to conclude that I can
8 reasonably assure the appearance of a defendant who owns
9 significant crypto currency assets in accounts which are not
10 traceable or accessible to the Government by nature. This is
11 what crypto currency in part is for. That risk, while it is
12 certainly not unlawful in and of itself to invest in crypto
13 currencies, for a defendant in the position of Mr. Griffith
14 who has now been under arrest for a month not to have provided
15 some visibility into those accounts, some documentation, some
16 assurance to the Government that he owns what he says he owns
17 and not more than that and that what he says he owns is in the
18 currencies or accounts that he says they are in I find
19 troubling particularly in connection with the fact that he is
20 not merely a crypto currency investor, he is a crypto currency
21 expert and a very skillful crypto currency expert who is
22 accused in this very case of using that expertise to secretly
23 aid a sanctioned foreign nature, namely North Korea.

24 I am somewhat troubled by what appears to be a delay
25 in disclosing the existence of the residence in Puerto Rico

1 whether owned or rented. I am somewhat troubled by the fact
2 that the defendant has lived primarily abroad for the last
3 three or four years and that his personal ties with the
4 exception of his parents, and I don't discount that. That's
5 an important personal tie but his other personal ties appear
6 to be primarily outside of the country but I'm also troubled
7 by the fact that even after a month in custody and
8 understanding the concerns of the Government the defendant did
9 not offer until today and in a rather sketchy last minute
10 manner to subject himself to the supervision of the Southern
11 District of New York's Pretrial Services at a traceable
12 residence in New York which would not require air travel to
13 come to court.

14 Finally, I think what pushed me over and made me
15 agree with the Government that the Government has met is
16 preponderance of the evidence burden here is the statements
17 that I am told the defendant has made including in private
18 conversations or conversations that he believed at the time to
19 be private with his family about renouncing his U.S.
20 citizenship, obtaining citizenship in jurisdictions that -- if
21 it is St. Kitts and Neves do not have extradition treaties
22 with the United States and/or perhaps jokingly, perhaps not,
23 setting up money laundering operation in a hostile nation,
24 namely North Korea.

25 Now, I have also considered the factors that counsel

1 set out to me including his voluntary cooperation with the FBI
2 in this country for a period of at least several weeks,
3 perhaps longer than that prior to his arrest. That does count
4 with me but it doesn't count enough given the other factors
5 which I have heard this evening.

6 I want to thank the defendant's parents for coming
7 to court today. I understand this must be very difficult for
8 you and I appreciate your willingness to pledge your assets
9 and co-sign a bond to support your son. I want to assure you
10 that it is not -- my decision is not based on any lack of
11 effort on your part or any doubt in your own sincerity that
12 you would do everything that you could to make sure that your
13 son honors his legal obligations. But based on the other
14 factors which I have heard this evening, Dr. Griffith, you
15 will be detained without bail.

16 When shall I set the preliminary hearing?

17 MR. BUCKLEY: Your Honor, we would request it within
18 14 days as required by the statute.

19 THE COURT: Sure. Fourteen days from today is
20 January the 9th. So I'll put you down for a preliminary
21 hearing on January 9th.

22 Anything further from the defense?

23 MR. BUCKLEY: Yes, Your Honor. With regard to that,
24 we do think that there is a potential Rule 5 violation given
25 the amount of time that it took for him to be transported from

1 California to here. It's not something we're asking the Court
2 to address right now but I just want to be clear that we
3 reserve our rights to raise it at a later date.

4 THE COURT: That reminds me. You say that Judge
5 Cote was acting in her Part One capacity; is that correct?

6 MS. RAVENER: Correct, Your Honor.

7 THE COURT: And since the matter has not been
8 indicted I take it there is no district judge conference set
9 in this matter.

10 MS. RAVENER: Correct, Your Honor.

11 THE COURT: All right. So thank you for bringing
12 that to my attention. You know what to do.

13 MR. BUCKLEY: Yes, Your Honor. The other thing that
14 I was going to ask counsel, out of town counsel, Brian Klein,
15 is flying in overnight and will be here tomorrow. We likely
16 will take an appeal of this order to the Part One judge.

17 THE COURT: Sure.

18 MR. BUCKLEY: So if the Court can direct the
19 Marshals or the U.S. Attorney's Office to coordinate to make
20 sure that Dr. Griffith is able to be presented for an appeal
21 as soon as tomorrow. Given the amount of time that has lapsed
22 we are anxious to get finality on this.

23 THE COURT: Ms. Ravener, who's on Part One tomorrow,
24 do you know?

25 MS. RAVENER: I believe Judge Broderick is on Part

1 One this week, Your Honor. So I think it's up to Judge
2 Broderick upon a submission from the defense as to when he'll
3 hear any appeal. Of course the defense has a right to seek
4 that and we will make every effort to make Mr. Griffith
5 produced in court at an appropriate time set by Part One.

6 THE COURT: So it will be up to the district judge
7 to set a time for that and I'm sure he will set it with the
8 production of your client in mind.

9 MR. BUCKLEY: Okay. Thank you, Your Honor.

10 THE COURT: We'll be adjourned.

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1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.

4
5 Shari Riemer

6 Shari Riemer, CET-805

7 Dated: December 27, 2019
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Exhibit B

K706GRIC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

20 CR 15 (PKC)

5 VIRGIL GRIFFITH,

6 Defendant.

7 -----x

8 New York, N.Y.

9 July 24, 2020

1:30 p.m.

10 Before:

11 HON. P. KEVIN CASTEL,

12 District Judge

13
14 APPEARANCES

15 AUDREY STRAUSS

Acting United States Attorney for the
Southern District of New York

16 MICHAEL KROUSE

17 KYLE WIRSHBA

KIMBERLY J. RAVENER

18 Assistant United States Attorneys

19 BAKER MARQUART, LLP

Attorneys for Defendant

20 BRIAN E. KLEIN

21 KERI C. AXEL

KOBRE & KIM, LLP

22 Attorneys for Defendant

23 SEAN S. BUCKLEY

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(Case called; telephone conference)

THE COURT: This is United States of America v. Virgil Griffith, 20 CR 15.

Appearing for the government?

MR. KROUSE: Yes, your Honor. Good afternoon. This is Michael Krouse for the United States. With me on the line are Kyle Wirshba and Kimberly Ravener.

THE COURT: Good afternoon to you all.

For the defendant.

MR. KLEIN: Good afternoon. This is Brian Klein. Along with me is Keri Axel and Sean Buckley and my client Virgil Griffith is also on the line and is appearing by telephone from Alabama.

THE COURT: Mr. Klein, am I correct that your client waives his physical appearance and agrees to proceed telephonically?

MR. KLEIN: Yes, your Honor.

THE COURT: Mr. Klein, this is your application. I have obviously read your letter, your submission, the government's and position and I am ready to proceed.

MR. KLEIN: Thank you, your Honor. This morning we're going to keep things interesting for you and Ms. Axel is going to argue for Mr. Griffith.

THE COURT: Wonderful.

MS. AXEL: Good afternoon, your Honor. It is good

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1 morning here in Los Angeles, your Honor.

2 THE COURT: Good morning then to you.

3 MS. AXEL: Thank you, your Honor.

4 Your Honor, yes, I am sure you now have had an
5 opportunity to look at the application we submitted and Judge
6 Broderick's order and as the Court now knows, Mr. Griffith has
7 a stringent package of pretrial release conditions that were
8 set by Judge Broderick in January. We have moved for an
9 amendment of two of the conditions. One is a removal of
10 electronic monitoring and as mentioned in the application of
11 course Mr. Griffith would like to have the electronic
12 monitoring equipment removed and be moved to a curfew system
13 instead. We're bringing that request at the instigation of
14 Carl Wallace. The supervising Pretrial Release officer in
15 Alabama requested that we make that part of our request. From
16 Mr. Griffith's perspective, he would love to have that
17 restriction lifted.

18 The internet restriction is the one that he would
19 really like the Court to focus on. And he really can't do
20 anything I think, your Honor, productive. I think most judges,
21 courts, Pretrial Services officers would love for defendants to
22 be in a situation such as getting a job and he can't do that
23 with the internet restriction that he currently has that allows
24 him to communicate only with counsel. He simply cannot do
25 things like take a class online or participate in Zoom meetings

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1 or communicate by email with friends. Many of the things,
2 which I think we all even now more in the pandemic situation
3 realize how dependent we are on it.

4 We waited to bring this application, your Honor. We
5 are mindful and sensitive of not wanting to burden the Court
6 with litigation when it wasn't ripe. So we waited to bring
7 this I think until the conditions were ripe. For example, I
8 think it is quite critical that cryptocurrency drives, his cold
9 wallets, as those are referenced, have now been secured. I
10 think a key piece of the government's argument concerning
11 flight was that those were essentially sort of unsecured
12 resources that could not be traced. Again, while we dispute
13 the premise about tracing them, nevertheless those cold wallets
14 are the key to accessing cryptocurrency. We understand the
15 government's concern and we always agreed not to go into the
16 apartment or take any acts to try to take custody of those, but
17 it took some period of time to actually work out a situation
18 where those could be secured by counsel and they now have been.
19 So I think that is a key changed circumstance.

20 I think that the global pandemic, your Honor, we would
21 submit, which the Court yesterday referred to as a national
22 emergency, is also a critical changed circumstance. I am sure
23 the Court has entertained petitions from defendants to get out
24 of jail and I know many of those petitions have been granted.
25 In this instance I think it definitely makes it harder for

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1 anyone to travel. Certainly more difficult for U.S. citizens
2 to travel. I had an international vacation I had to cancel
3 this summer. You simply cannot move around the way you used,
4 but I think it has changed the lens by which we view things. I
5 think things were very transitional at the time that the
6 parties were in front Judge Broderick and Mr. Griffith's life
7 obviously was completely disrupted at the time and we may not
8 have fully appreciated how that restriction would wreck havoc
9 on his ability to do anything to do productive.

10 Specifically, your Honor, the work situation has
11 changed. I think the record in front of Judge Broderick makes
12 it clear that the Court there was interested in his working.
13 Pretrial Services has always recommended that a condition of
14 his release be that he works and Judge Broderick required about
15 work and at the the time we simply didn't know. The conditions
16 of his arrest were laid out in her papers, but he is arrested
17 on Thanksgiving. He is transported in November or December to
18 New York. He doesn't get an appearance until the day after
19 Christmas and his first appearance before Judge Broderick took
20 place in early January. So things were very much in the air
21 and we just did not have information or really had much
22 opportunity to give thought to work and what that might look
23 like.

24 It is clear now that he is going to still be on leave
25 at the Ethereum Foundation, but he has been offered a

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1 consulting contract and we offered to make that available to
2 the Court *in camera* if the Court wishes to see it. I think he
3 would be available to do other types of that kind of work.
4 Given his skill set and I think the where the work world is at
5 your Honor, he has to have the ability to work online, on the
6 internet in order to do that kind of productive work and to use
7 his skills. So I think that situation has also changed since
8 the time of the initial hearing.

9 I would say, your Honor, particularly during this
10 pandemic, the way for him to get a job is to have internet
11 access and have monitored internet access. This is going to
12 get beyond my technical expertise, your Honor, but he does
13 back-end work on people's servers from a computer perspective
14 and it is the type of work that is protected by trade secrets.
15 And Pretrial Services monitoring software, which Mr. Griffith
16 also has to pay for which is on the computer now which takes an
17 image of your screen regularly and transmits, is not secure.
18 We had a conversation yesterday about VPNs, and people
19 obviously go to great steps to protect their data as employers
20 would want their data protected. So I think it is critical for
21 his work to be able to have that kind of internet access.

22 Finally just on the changed circumstance I will say,
23 your Honor, it appeared to us as Judge Broderick recognized
24 that this is a fluid situation and he even provided the parties
25 an opportunity to come back before the final assignment of a

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1 judicial officer, which of course we now have in your Honor.

2 So we think that these are changed circumstances and this is an
3 appropriate time to revisit these conditions so that
4 Mr. Griffith can be as productive as possible while here on
5 release.

6 THE COURT: Thank you, Ms. Axel.

7 Let me hear from the government.

8 MR. KROUSE: Yes, your Honor.

9 Before the Court are two requests that the defense has
10 made. It sounds as though the request to lift home confinement
11 is not one that the defense is pressing. They continue relying
12 on the Pretrial Services officer. So that one the government
13 will just say that the defendant remains a risk of flight for
14 all the reasons laid out in the government's papers and all the
15 reasons that were expressed to Judge Broderick. Judge
16 Broderick found that there were conditions that would
17 reasonably assure the defendant's appearance in court. One of
18 those conditions was the home confinement condition. The
19 defense doesn't express any justification really for why that
20 condition should be lifted at this time. Unless the Court has
21 questions about that, I will move to the internet monitoring
22 condition.

23 THE COURT: Well, Judge Broderick appears to have
24 ordered home detention with electronic and GPS monitoring; is
25 that correct?

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1 MR. KROUSE: Yes, your Honor.

2 THE COURT: Let me just hear defense counsel as to
3 precisely what about that that you seek to have modified if
4 anything.

5 MS. AXEL: Your Honor, we would be happy for
6 Mr. Griffith to have curfew, but it is specifically the
7 electronic and GPS monitoring. I think when you use the words
8 "home detention," I think the difference is that with home
9 detention he has to be specifically approved for even things
10 like going out to take a course or going to the gym.
11 Mr. Griffith has expressed to me like there are times when he
12 is needed to go pick up food for the family or he would like to
13 go pick up food for the family even those sorts of things on
14 home detention have to be approved and he can't always get in
15 contact with Mr. Wallace to get approval to do things that help
16 make him also a productive member of his family unit. I am not
17 sure of the terminology necessarily used in your district, but
18 I think we would ask for simply a curfew without the home
19 detention or electronic monitoring so he could both pick up
20 food, go to the coffee shop, go to the gym without approval,
21 etc.

22 THE COURT: Thank you.

23 Go ahead, Mr. Krouse.

24 MR. KROUSE: Your Honor, from the government's
25 perspective he shouldn't be doing any of those things while on

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1 home detention. He needs specific approval to leave the home
2 for legitimate reasons, which include work, which could include
3 attorney visits and things of that nature. The government's
4 argument before Judge Broderick is that he should be detained
5 as a risk of flight. Judge Broderick determined that there
6 were bail conditions that would reasonably assure the
7 defendant's presence and ordered very strict bail conditions to
8 include home detention with electronic monitoring.

9 I am not hearing anything from the defense about why
10 that condition is no longer required. Judge Broderick found
11 that it was. The government's position is that it is required.
12 And that if anything the strength of the evidence in this case
13 has enormously grown since the time we were before Judge
14 Broderick. So if anything, the defendant's incentive to flee
15 in light of the strength of the government's evidence against
16 him, in light of the substantial term of imprisonment he could
17 face, the government put in its letter what its initial
18 determination of what the sentencing guidelines would be all
19 provide an incentive for the defendant to flee. So if anything
20 what was before Judge Broderick has now grown stronger and the
21 home detention with electronic monitoring in the government's
22 view is both appropriate and necessary to ameliorate any risk
23 of flight that the defendant poses.

24 THE COURT: All right. Now let me ask the government
25 is the restriction on computer use and the requirement of

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1 loading monitoring software limited to risk of flight, or is
2 there some other justification for this condition?

3 MR. KROUSE: Your Honor, it is both in the
4 government's view. So there is a justification for the risk of
5 flight. The defendant is an expert on the dark web. Our
6 understanding is that he developed a browser for the dark web.
7 As your Honor is likely aware, the dark web can be used for a
8 number of elicit purposes, including to secure identity
9 documents and things of that nature which could facilitate the
10 defendant's ability to flee the jurisdiction.

11 The danger to the community is also a factor to
12 consider here. The defendant has a sophisticated knowledge of
13 technology, which the government has laid out in its papers
14 which underlie the charges in this case. He has expressed
15 several times a willingness to use that technological knowledge
16 to assist the regime, namely, North Korea with the development
17 of blockchain and cryptocurrency technologies. We discussed
18 several communications that the defendant had with the
19 co-conspirator regarding the possibility of shipping a rig in
20 order to mine cryptocurrency on behalf of North Korea. He
21 traveled to North Korea to provide a presentation on these
22 technologies. Giving the defendant untethered access to the
23 internet would possibly allow him to reach back out to
24 co-conspirators to further North Korea, to possibly chill the
25 government's investigation, to contact individuals who are

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1 possible witnesses for the government's investigation all of
2 which underscores the necessity to have the monitoring
3 technology in place.

4 It is not the case that Mr. Griffith can't use the
5 internet. That's not what Judge Broderick said. He said that
6 he can't have a Smartphone and that if he uses the computer
7 that has internet access or some internet device, it needs to
8 be monitored except when he is speaking or emailing with his
9 defense counsel. In our view that strikes the appropriate
10 balance. There is no reasons provided by the defense for
11 lifting that condition other than this unclear in the
12 government's view notion that he can't work as a result of that
13 condition. The reality is he may need to find a job that is
14 consistent with the conditions of release that were imposed by
15 Judge Broderick and there is no reason to lift that condition
16 as far as the government can tell.

17 THE COURT: Can you tell me whether Judge Broderick's
18 order was premised upon a finding by the preponderance that
19 these were the conditions that can reasonably assure the
20 defendant's appearance, or whether the restrictions were in
21 part based on a danger to the community to persons other than
22 defendant?

23 MR. KROUSE: Your Honor, I may be wrong and I would
24 want to look more closely, but I don't believe Judge Broderick
25 made a specific finding on that point.

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1 THE COURT: Okay.

2 MR. KROUSE: He gave conditions that he thought were
3 appropriate for the defendant's release. It's possible he had
4 in mind both. I don't think it is entirely clear as the
5 defense makes it that it is purely a risk of the flight that
6 the Court was relying on because I don't think he said that one
7 way or another.

8 MS. AXEL: Your Honor, I will jump in here. The
9 government --

10 THE COURT: I am happy to have you jump in, but I
11 think Mr. Krouse isn't done.

12 Are you done, Mr. Krouse?

13 MR. KROUSE: Yes, I am, your Honor.

14 THE COURT: Okay. You are welcome to reply.

15 MS. AXEL: Yes, your Honor. The government never
16 argued detention. They never argued danger. Not in three
17 hearings did they ever argue danger. I don't know if the Court
18 has access to the Pretrial Services report, but the issues here
19 were never about danger and they didn't argue that.

20 I think the Court focused early on on the first
21 questions to Mr. Krouse about sort of the nexus between what is
22 purpose of a condition and is it addressed to just reasonably
23 assure that the defendant will appear or whether it was
24 addressed to something else like danger. I think it can only
25 have been addressed to assure defendant's reasonable appearance

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1 because that is the only thing that was ever argued. They have
2 never argued that he is a danger. He is not a danger, your
3 Honor.

4 I think the whole pattern of his very much out and
5 public communications about the decision to go to North Korea
6 shows that. In fact, we obviously don't agree with everything
7 in the government's proffer about his case; but I think what
8 the Court can take from that is none of that was high tech.
9 We're not talking about somebody getting on and doing some sort
10 of programming thing. He is not accused of actually using his
11 computer skills for ill. He gave a lecture and they put in the
12 remarks of what the they allege he said in that lecture.
13 That's the sum total of it. They never alleged that he is a
14 danger and he is not a danger.

15 I am happy to speak briefly to the dark web issue,
16 your Honor, which was put in front of Judge Broderick. And I
17 think we were very well able to point out that in fact
18 Mr. Griffith in the context of his knowledge of the dark web
19 has used those skills for good. Your Honor, we handed up to
20 Judge Broderick -- I wasn't there and the Court wasn't there
21 giving the time of it, but I read the transcript and I
22 participated in the preparation for it. We handed up to Judge
23 Broderick the research paper.

24 Mr. Griffith is a Ph.D and had a research interest in
25 the dark web and prepared a paper about access to the dark web.

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1 One of the key findings of that paper, your Honor, is in fact
2 that it is not completely dark because it's used for human
3 rights purposes. A business many times can use it when their
4 countries do not allow them to access Facebook and have free
5 speech that we have here. He wrote a research paper to that
6 and he in fact got kicked out of the tour project, which was a
7 project where they had created this sort of Google device to
8 access the dark web because Mr. Griffin insisted on cooperating
9 with law enforcement and he has cooperated with law enforcement
10 in teaching and talking about the dark web. He provided a
11 lecture to Interpol. In the government's discovery there are
12 correspondence with an FBI agent in Las Vegas, who sent a
13 request for him to pull logs in furtherance of an FBI
14 investigation. Her name is Anne M. Kempf. He did so without
15 subpoena so that the data could be preserved. So he has
16 cooperated with law enforcement. He has never been accused of
17 doing anything wrong. So I think it is very important for the
18 Court to sort of separate out these whiffs or suggestions of
19 dangerous use of the internet from really which poses a risk of
20 flight. There is nothing about his use of the internet that
21 poses a risk of flight. There is just this mere speculation of
22 something untoward on the dark web. I suggest, your Honor,
23 that is mere speculation. There is no evidence to support it.
24 We don't accept it. We have represented defendants who's
25 expatriate or less. It is actually a very complicated process

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1 and it is not so easy. So we reject that suggestion. But it
2 mere speculation and if in fact Mr. Griffith wanted to use the
3 dark web for such purpose, he likely would not do so on his
4 home computer, your Honor.

5 THE COURT: Why is that?

6 MS. AXEL: Well, I think if you were the Dr. Evil,
7 your Honor, that they made him out to be, he wouldn't sit at
8 his home computer that the government could come in and get a
9 warrant to take after he fled and use that to provide the
10 research trail, which would show exactly how he got his
11 passport. That sort of defies logical sense.

12 THE COURT: Okay.

13 MS. AXEL: I am sure the Court is familiar with the
14 idea of a burner phone from a drug deal.

15 THE COURT: I am.

16 MS. AXEL: Well, you could imagine someone would get a
17 burner computer and they would go to a public spot where they
18 would have an ISP that couldn't be traced. So what this
19 restriction does is it doesn't keep anyone from doing these
20 farfetched scenarios that the government proffers concerning
21 speculatively buying a passport somewhere. What it does do,
22 though, is keep him from Zoom calls with counsel, internet
23 research with counsel, getting a job with an employer that
24 would require his communications to be confidential, doing a
25 workout that is available on YouTube, taking an online course

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1 of some kind and all of that legitimate stuff that all of us
2 do. It keeps him from that when it does not really secure
3 against these wild scenarios that the government posits.

4 Coming back to another point that I just need clean
5 up, your Honor, Judge Broderick's order doesn't allow him to
6 use the internet but the monitoring software for any purpose.
7 It only allows him to use the internet for communications with
8 counsel, and we have had an ongoing dialogue with Pretrial
9 Services exactly what that means. We have to revisit it
10 because there are a lot of things that go on in communication
11 with counsel that are not limited to just emails from their
12 email device.

13 So it is a much broader restriction than they make it
14 out to be. You he cannot have internet on his phone, which
15 means no smart device. He cannot order or post from his phone.
16 He can't have internet on his computer other than what is in
17 purposes -- I think for the sole purposes of communications
18 with counsel. So he cannot do what the government is saying
19 that he can do. It is prohibited by the way that the order is
20 drafted. All right. Here is my concern and you are welcome to
21 address it. Why isn't their clear and convincing evidence in
22 this case that the defendant represents a danger to the
23 community and persons other than himself? He assisted it
24 appears from the transcripts or endeavored to assist the DPRK
25 in learning how cryptocurrency works and providing them

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1 information.

2 For example, in addition to his attendance at the
3 conference, the government alleges that he proposed over an
4 encrypted application "If you find someone in North Korea, we'd
5 love to make an Ethereum trip to the DPRK and set up an
6 Ethereum node." And when questioned whether the plan made
7 economic sense Griffith responded, "It does actually. It will
8 help them circumvent the current sanctions on them." He made
9 repeated reference to the ability of the DPRK with the
10 knowledge of blockchain and cryptocurrency to evade both U.S.
11 and U.N. sanctions. That comes up multiple times during the
12 transcript. My concern is there is a lot you can read on the
13 internet about blockchain technology and about cryptocurrency.
14 I have done so myself in connection with other work.

15 MS. AXEL: Yes, your Honor.

16 THE COURT: The fact of the matter is there are
17 aspects of it that a person with Mr. Griffith's skills,
18 knowledge, experience and background could supply questions
19 that he could answer that would either elucidate risks of
20 detection to the North Koreans or means to avoid that risk of
21 detection. The problem with information once transmitted it
22 cannot be clawed back. Why doesn't that based on the probable
23 cause finding by the grand jury and the evidence proffered by
24 the government support a finding that releasing the computer
25 restriction also, in particularly if the home confinement or

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1 home detention is lifted, so that he can go elsewhere and use
2 the computer in an unmonitored setting, why doesn't that
3 present a danger of damaging advice being provided to the North
4 Koreans?

5 MS. AXEL: Well, your Honor, it is difficult to know
6 exactly where to start. First of all, I will point that it is
7 the government's burden to prove that he is a danger and they
8 have never argued that and that is for a reason, your Honor. I
9 would love to contextualize again some of the arguments that
10 they have made on the merits to point out this is really about
11 a trip to North Korea to attend the conference the remarks of
12 which at least -- we're not conceding that it is an accurate
13 transcript or that it is an inadmissible transcript, but the
14 government has submitted to the Court what it believes that the
15 defendant said there. I think to contextualize that, that is
16 the only direct contact with North Korea that the government
17 has alleged. I would submit it is the only one that they will
18 ever allege is that trip itself. Those remarks are at a high
19 level of generality.

20 Again, we have defenses to this case. I don't think
21 we want to tip our full hand to what those are, your Honor, but
22 those are not services. They have alleged services and those
23 are not services. In fact, I am familiar with the Court's --
24 the briefing before the Court in SEC v. Telegram because we do
25 that type of work and I know the education the Court has had

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1 there concerning blockchain. This kind of information was at
2 an extremely high level. It is not how to make a
3 cryptocurrency and not how to make a cryptocurrency exchange,
4 which the government said at one point. It is totally
5 nontechnical. It is the type of thing you discuss at a
6 conference. It is not the type of thing you do when you sit
7 down at your computer to draft code. None of that occurred and
8 none of that is alleged to have occurred.

9 The government has also strung together, setting aside
10 the conference, a few other events. Your Honor, again, we want
11 to satisfy the Court's concern that there is no danger
12 presented without divulging all the defense theories in this
13 case; but I think the events concerning a node were ones that
14 were actual communications involving the Ethereum Foundation
15 itself. Those ended because -- again, I don't want to divulge
16 the entire theory of the case, but that whole conversation is
17 completely separate from the conference itself. I think what
18 those communications do show is again there is not - he has no
19 alliance to anybody at the DPRK. None of those communications
20 shows that he does.

21 The final aspect that the Court referred to about
22 exchange of cryptocurrency, again, that also is not in any kind
23 of communication with the DPRK correctly. They are not
24 providing technical information to anybody. Again, there is an
25 end of that story that I think we need to save for the actual

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1 merits of the case itself, but I think that the evidence will
2 show that there is no back channel to the DPRK and I don't
3 think there is anyone alleged there. So, your Honor, there is
4 no evidence that defendant would or has directly contacted the
5 DPRK and would pose a danger in that respect. And the
6 information that was provided at the conference as the Court
7 can see is consistent with what is available on the internet.

8 So it is not a concern. Obviously Mr. Griffith has
9 already been punished for that conduct. He has been arrested
10 in the United States. He has transported across the country.
11 He has been told not to communicate with witnesses. The
12 government made another point here about how important it is
13 that he communicated with these witnesses but then they never
14 gave us a list of whose these people. So we as a defense have
15 done our own instructions, but they have no evidence that he
16 has done anything improper with the telephone he has that has
17 no smart access, but to contact those people. So the idea that
18 he would be so stupid to go off to try to provide some active
19 assistance now when he never did so before, I just think that
20 we're far afield from really a conversation about a danger
21 which he doesn't pose or a risk of flight, which he also
22 doesn't pose.

23 THE COURT: Thank you.

24 Since this is the government's burden of proof
25 certainly on release and release conditions, I will give Mr.

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1 Krouse the opportunity to respond.

2 MR. KROUSE: Thank you.

3 Just on this danger to the community point, defense
4 counsel is correct that the government didn't argue that before
5 Judge Moses or Judge Broderick relying instead on what we
6 believe was the stronger ground of risk of flight. We did
7 argue for detention. Of course now that the defense has sought
8 to reopen the bail argument before your Honor, it is our view
9 that your Honor can consider both grounds to continue that
10 condition or to make any other modification that the Court
11 deems appropriate.

12 So just on this point, your Honor, the government
13 argued for detention for the defendant. We believe that he
14 posed a risk of flight for all the reasons we laid out -- the
15 strength of the evidence, the prospects of punishment, the ties
16 to foreign jurisdictions, the unknown nature of the defendant's
17 financial resources. All of that in the government's view
18 posed a risk of flight.

19 On this point of internet access, the government
20 strenuously argued for a complete ban on any use of the
21 internet by the defendant. Judge Broderick decided to do a
22 more limited version of that to allow the defendant
23 opportunities to use the internet to communicate with his
24 counsel, but he did impose certain restrictions in light of the
25 defendant's sophisticated technological knowledge and that was

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1 appropriate. The defense's argument seems to be that
2 Mr. Griffith's lack of use of the internet is some
3 inconvenience to him, but that shouldn't move the Court. This
4 was a balance that Judge Broderick struck as a way of not
5 detaining him in prison. So the fact that he has certain
6 inconveniences that normal citizens don't have is not a ground
7 to lift a restriction that is appropriate in order to address
8 the specific risk of flight posed by the defendant and the
9 government believes in light of your Honor's questions the risk
10 danger that he could pose using his technological knowledge to
11 continue to advise North Korea about cryptocurrency and
12 blockchain technologies.

13 The defense's argument here seems to be there should
14 nobody restriction in place because if he was really going to
15 do that he would find some other way to do that like using a
16 burner lap top or burner phone. That doesn't seem to be a
17 strong argument. The government is limited in how it can
18 control the defendant's actions when he is on bail, which is
19 why the government argued for detention in the first place.
20 That is not a reason to lift all restrictions because they
21 would somehow be not fruitful. The government does want to
22 make it a little more difficult for the defendant to do things
23 that he might decide to do while on bail that are consistent
24 with the things that he was doing before he was released on
25 bail.

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1 So the defense argument that travel to North Korea and
2 providing this technical knowledge to one of the most dangerous
3 and human rights violating countries in the world is somehow
4 not significant conduct and doesn't illustrate a desire to
5 assist North Korea I think is inaccurate. The defense argument
6 that the government's evidence doesn't show anything beyond
7 just certain types of technical information provided by the
8 defense is also off base. The government doesn't have a full
9 transcribed recording of the entire conference. We don't know
10 exactly what Mr. Griffith said every second he was there and
11 every single person he spoke to. We don't know who he
12 connected with in North Korea, whose contact information he
13 might have obtained, who he might have spoken to later. We
14 don't have full visibility on that. We're limited by what
15 evidence we've been able to gather up to point, which is
16 significant. The recordings are just a snippet of the full
17 conference. We're not claiming that we have every single
18 communication made by the defendant during that conference.

19 We have not been able to gain access to the
20 defendant's lap top even with our search warrant. We don't
21 know if the defendant was utilizing the dark web to have
22 communications with people that he met in North Korea after he
23 left the conference or before he traveled to the conference.
24 There is a lot we don't know here. It's prudent in the
25 government's mind to take steps to try to prevent the defendant

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1 from further damaging national security by communicating
2 possibly with other people and one prudent step toward that end
3 is to monitor his internet access. There is nothing the
4 defense has said in the government's mind that justifies
5 limiting that monitoring condition on his bail in light of the
6 national security concerns posed and in light of the legitimate
7 risk of flight that the defendant poses.

8 THE COURT: Thank you, Mr. Krouse.

9 Thank you, Ms. Axel.

10 This is the Court's decision on the application of
11 Virgil Griffith to modify the present bail conditions and to
12 remove the condition of home confinement or detention and/or to
13 at least modify them to a curfew and eliminate the electronic
14 monitoring and GPS and also to modify the restriction of access
15 to internet capable devices that are monitored and then use
16 only for email communications with counsel.

17 It seems to me that Judge Broderick struck a fair
18 balance in this case. I will point out that the proof of risk
19 of flight, which I find by a preponderance of the evidence is
20 supported by the defendant's obvious access to sources outside
21 the United States. He is of great value to those who wish to
22 evade U.S. or U.N. sanctions with his knowledge and they would
23 be incentivized to help him flee. So I find that the
24 conditions that are presently existent satisfy that.

25 Further, this is my finding by clear and convincing

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1 evidence that the conditions are necessary because Mr. Griffith
2 presents a danger to the community and persons in that
3 community other than himself. The reason I make this finding
4 is having reviewed the partial transcript and which both sides
5 say are unsure of the actual accuracy, the comments reflected
6 therein are of a quote/unquote high level. In other words, it
7 would enable anyone to develop a blockchain in and of
8 themselves, but the point is that he was able to --

9 MS. AXEL: Hello. Did we lose the Court.

10 MR. KROUSE: I think we should wait to see if he calls
11 back.

12 THE COURT: I guess it is a mark of the length of our
13 proceeding that the battery on my phone ran out and I have
14 secured another phone. So that's where we are.

15 As I was pointing out, it is not merely the transcript
16 but the willingness to travel knowing of the likely exposure of
17 the risk he was willing to take is such that this man in my
18 view has the ability to respond to detailed questions with
19 technical information and knowledge that poses a grave danger.
20 That's my concern here and the modest restrictions that Judge
21 Broderick imposed appear to me to address that danger as well
22 as the risk of flight.

23 So the application to modify bail conditions is
24 denied.

25 Anything further from the government?

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1 MR. KROUSE: No, your Honor. Thank you.

2 THE COURT: Anything further from the defendant?

3 MS. AXEL: Well, I have one question if I may, your
4 Honor.

5 THE COURT: I don't about questions; but if you have
6 an application you want to make, I am happy to hear it.

7 MS. AXEL: Okay. Well, I think my application to the
8 Court would be I think there is confusion here about at least
9 the order itself and how it applies to the use of the internet.
10 Would the Court permit the defendant to use the internet on his
11 computer that is monitored but not just for communications with
12 counsel? As I said even just to assist the criminal defense,
13 he needs to be able to use the internet beyond the
14 communications with counsel. He needs to run internet searches
15 for example. So if that were on the monitored computer, which
16 apparently was what the government's thought that the order
17 was -- we have been reading it more conservatively -- would the
18 Court allow him to use a monitored computer for whatever
19 purpose on the internet?

20 THE COURT: I understood your application to apply
21 specifically to the limitation on use of the computer except
22 for communications with counsel. I know I read that and I
23 think you say right in your letter that the restriction of his
24 access to the internet be modified. "He is only permitted to
25 email with his counsel." So there is no confusion on this.

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1 That is what your application was and that is what I understood
2 it to be and that is what I ruled on.

3 MS. AXEL: Okay. Thank you, your Honor.

4 THE COURT: Anything else from the defendant?

5 MR. KLEIN: Your Honor, this is Mr. Klein.

6 THE COURT: Yes, sir.

7 MR. KLEIN: I had one point that I forgot to raise
8 yesterday when we were discussing the motion schedule that I
9 wanted to raise.

10 THE COURT: Yes, sir.

11 MR. KLEIN: Which is we wanted to ask your Honor to
12 inquire with the government if they plan to supersede between
13 now and the time of motion practice. If so, we would request
14 that they do so a month in advance of motion practice just for
15 the simple fact that we're not writing motions that get mooted
16 or somehow would radically change by a superseding indictment.

17 THE COURT: I understand your concern. If the
18 government supersede, I have no idea. That's their
19 prerogative. That is between the government and the grand
20 jury. You will have a basis to argue whatever you want to
21 argue in terms of an extension in the schedule or change in the
22 schedule.

23 MR. KLEIN: Thank you, your Honor.

24 THE COURT: Thank you all very much for the very fine
25 presentations.

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We're adjourned.

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